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Public Utilities Fortnightly



VOLUME V

June 12, 1930

NUMBER 12

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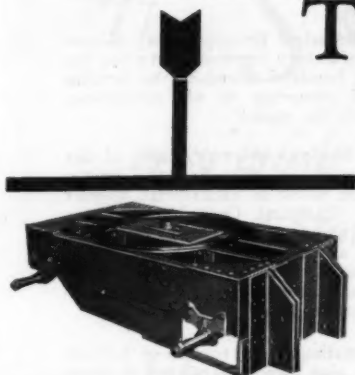
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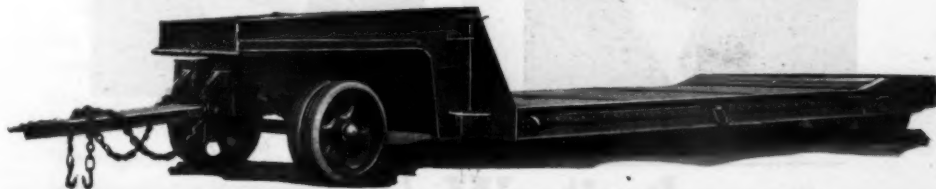
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Pages with the Editors

THIS issue of PUBLIC UTILITIES FORTNIGHTLY is issued in celebration of our birthday.

FIFTEEN years ago, when the present system of regulating utilities by State Commissions was in an early experimental stage and when its future was problematical, the imperative need arose for printing and disseminating and preserving for reference the Commission's rulings, opinions and decisions.

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FROM this beginning has grown the publishing house known throughout the country as Public Utilities Reports, Inc., which issues not only the five-volume annual "*Public Utilities Reports, Annotated*," but PUBLIC UTILITIES FORTNIGHTLY—the only magazine in the country dedicated exclusively to the principle of public service regulation.

THE introduction to our readers of the contributors to this number—all so well known as to require no introduction—puts the editors in somewhat the position of the White House official who introduced WILL ROGERS to PRESIDENT COOLIDGE.

WILL ROGERS seized the opportunity of converting a perfunctory ceremony into the beginning of a beautiful friendship by bending forward and observing in all seriousness, "I didn't catch the name?"

ROGER W. BABSON—as every reader of this magazine knows—is the BABSON, known throughout the world as a statistician, founder of Babson's Statistical Organization, as a director in numerous important industrial corporations, and as author of several books and magazine articles on economic topics, including the current series of articles in PUBLIC UTILITIES FORTNIGHTLY.

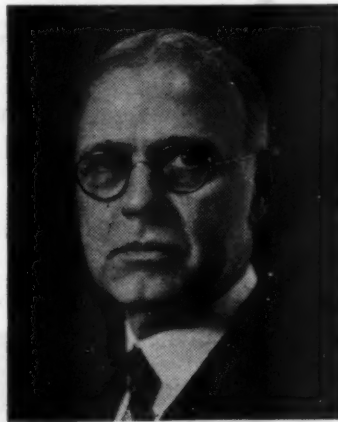
THE presentation to our readers of LUTHER R. NASH is also merely a matter of form, as he is widely acquainted throughout the public utility industry, not only as vice-president of Stone & Webster, Inc., but also as a rate expert, appraisal engineer and as an economist who has written numerous magazine articles and monographs on utility problems—including the book "*Economics of Public Utilities*."

MR. NASH is a Connecticut Yankee by birth, who graduated from the Massachusetts Institute of Technology in 1894, received the degree of S.M. from Harvard "as of 1898," and has been engaged in utility work for the past thirty-five years.

(Continued on page VIII)



PROF. RALPH L. DEWEY
(See page 715)



LUTHER R. NASH
(See page 730)

ECONOMICS OF THE ELECTRICAL INDUSTRY

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FATHER JOHN A. RYAN
(See page 756)

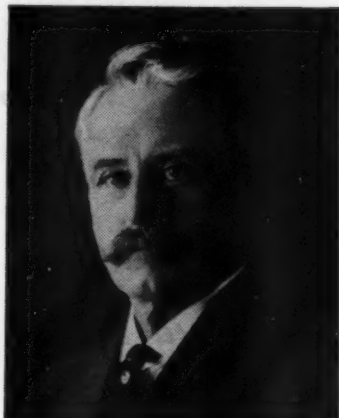
DR. RALPH L. DEWEY (whose article "The Municipal Plant; Is It Coming or Going?" is a dispassionate and scholarly survey of a highly controversial subject), completed his academic work in economics at Oberlin College, Ohio State University and at the University of Michigan; from the latter he received his Ph.D. degree.

FOR several years DR. DEWEY has specialized in the problems of the electric utilities and of the railroads, and has written and lectured extensively on these topics; at present he is Assistant Professor of Economics at Ohio State University.

HON. C. W. McDONNELL, whose article "Why Ratepayers Complain to the Commissions" presents an illuminating viewpoint on the public relations activities of the utilities as seen by the State Commissioners, has served as a member of the regulatory body of his state since 1921 (the Board of Railroad Commissioners of North Dakota), and is now president of that organization.

CHESTER T. CROWELL is an Ohioan by birth, who began his career as a newspaper man in the southwest; during the past few years he has established himself as a magazine writer for the leading periodicals in the country—including, of course, the world's fastest-growing fortnightly, a copy of which you are now reading.

JOHN A. RYAN (a name that has broad repute in the economic journals) is in reality FATHER RYAN, Professor of Moral Theology and Industrial Ethics at Catholic University, Washington, D. C., since 1915.



COMMISSIONER C. W. McDONNELL
(See page 749)

FATHER RYAN, prominently identified with the liberal group of economists and a literary co-worker with MORRIS HILQUIT, the Socialist, has taken an active, not to say aggressive interest in regulatory problems, and is the author of numerous works on public matters.

JOHN T. LAMBERT, whose column "As Seen from the Side-lines" appears regularly in these pages, is one of the most experienced newspaper men in the country; he now is located in Boston.

HENRY C. SPURR and FRANCIS X. WELCH are both of the staff of this magazine.

THE frontispiece of this number (which is published by courtesy of the General Electric Company) is a color reproduction of an oil painting by WALTER L. GREENE.

MR. GREENE, a native of Massachusetts, studied art in his home state, in Paris and Italy; he has specialized in subjects illustrative and symbolic of America's industrial progress—a field which has been strangely overlooked by artists generally, but which is overwhelmingly rich in subject matter and inviting to the painter with imagination and a sense of dramatic values.

AGAIN this magazine has figured among the permanent historical records of our country; the article by CONGRESSMAN EMANUEL CELLAR, "The Proposed Revamping of the Federal Power Commission," in our May 1st number, was reprinted in the May 2nd issue of our Esteemed Contemporary, the "Congressional Record."

THE next number will be out June 26th.
—THE EDITORS.

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Pioneers of Progress

"The wilderness and the solitary place shall be glad for them; and the desert shall rejoice, and blossom as the rose."

—ISAIAH XXXV: 1

Public Utilities

FORTNIGHTLY



VOL. V; No. 12

JUNE 12, 1930

The Municipal Plant

Is It Coming or Going?

HERE is an analysis, written without bias and based upon facts and figures, of present-day trends in the electric power field. In it the author, who is a widely-known economist, points out the probable development of both the privately-owned and the city-owned plant, and the relative position that each is likely to occupy in the future.

By DR. RALPH L. DEWEY
OHIO STATE UNIVERSITY

IN the United States, public opinion has for some decades favored, in the main, two devices for controlling the sale of electric light and power to consumers; one is private ownership and operation with state and local control of rates and service; the other is municipal ownership and operation.

The relative merits of these two forms of control have been widely discussed on the platform and in the press during the past few years—a rather surprising situation in view of the relatively minor role being played by the municipally owned systems.

Since much of the data and arguments presented by both the proponents and opponents of municipal ownership and operation has been inaccurate, incomplete, or otherwise misleading, it seems desirable at this time to review the data and to secure, if possible, some warranted conclusions concerning the past development, present status, and immediate prospects of municipal ownership.

THE past development and present status of municipal ownership may be displayed, absolutely and relatively, (first), in terms of the num-

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ber of systems or what the United States Census calls "establishments," and, (second), in terms of the importance and scale of operations. These two general aspects of municipal ownership and operation are considered in more detail in the following sections.

I

MUNICIPAL ownership of central electric light and power stations first appeared in 1881 when one such company was organized.

During the eighties, municipalities were loath to build plants and, as a result, nearly all electric light and power establishments were constructed by private capital. Towards the end of 1889, however, small municipalities, believing thoroughly in the benefits to be derived from central stations and yet unable to induce private capital to furnish the necessary equipment, began to set up their own companies.

This movement developed so rapidly that 815 municipal companies were in operation by 1902, the year of the first Federal census of electrical industries. Concerning the development of municipal ownership in the United States during the period 1881 to 1902, Mr. Thomas C. Martin, special United States agent, who compiled the text of the first census report, observed:

"The spread of the agitation for municipal ownership of public service enterprises is illustrated in a somewhat striking manner. . . . Of the 815 municipal stations enumerated, only 68 had been put in up to 1889. In that year, 40 were introduced, and, in 1895, the number of new stations reached 73, increasing

in 1898 to 82. The returns for 1902 indicate that the ratio was fully maintained in the census year."

Thus the movement toward municipal ownership was fully maintained and going forward rapidly at the turn of the century.

BEGINNING in 1902 and continuing at intervals of five years until 1922, the Federal census of electrical industries has contained valuable data concerning the development of municipal ownership. The number of systems advanced from 815 in the former year to a peak of 2,581 in the latter year, an increase of 216.7 per cent. Since 1922 (relying upon data published by the National Electric Light Association) the number of municipals has declined steadily to 2,030 at the end of 1927, a loss of 21.3 per cent.

Superficially, these data would seem to indicate the rise and fall of municipal ownership in the United States, but a comparison with the development of private ownership of the industry shows this conclusion to be true only in part.

Municipal ownership continued to increase until 1922, while private ownership reached its peak in 1917. Between 1902 and 1917, the total number of private operating companies increased from 2,805 to 4,224, an increase of 50.6 per cent, which is a much smaller relative advance than that achieved by the municipals (184.4 per cent). In terms of actual increase, the municipal increase of 1,503 establishments was but little more than the private increase of 1,419 establishments. After 1922, both municipally and privately owned

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plants suffered recessions, but this was more noticeable among the commercial than among the municipal companies. At the end of 1927, there were 1,237 (33 per cent) less private companies and 551 (21 per cent) less municipal companies than in 1922.

Thus the municipals have shown a marked tendency either to increase more rapidly (1902 to 1922) or to decrease less rapidly (1922 to 1927) than private companies.

THE fact that the number of municipals has steadily increased in proportion to the number of private plants may be observed by computing the ratio of municipal to all operating establishments. In every 5-year period, the proportion of municipal systems to the total number steadily advanced: 22.5 per cent in 1902, 26.6 per cent in 1907, 29.9 per cent in 1912, 35.4 per cent in 1917, 40.6 per cent in 1922, and 44.4 per cent in 1927. If one may rely on the statistics published by the *Electrical World* (which are only estimates), the municipals will become 50.1 per cent of the total in 1929, the first time in history that municipally owned electric light and power companies have out-numbered the private companies.

In terms of numbers, and in proportion to privately owned companies, municipal ownership has assumed greater significance with each passing year.

II

AMONG the questions which naturally are raised by these observations one seems to be of sufficient importance to warrant immediate analysis.

What factors caused the number of municipal establishments to expand so rapidly until 1922 and thereafter to decline with even greater rapidity?

The answer to this question depends largely upon the economic conditions of the times.

BEFORE the World War, two considerations caused cities and towns to own and operate electric light and power establishments:

First, the inability of isolated small towns to secure the construction of generating plants or transmission lines by private capital;

Second, the belief of many citizens in towns and cities already served by private establishments that public control of rates and service by franchise, by local and State Commissions, or by any means then available other than municipal ownership did not secure to consumers, especially domestic consumers, as low rates and adequate service as conditions of operation would warrant.

In 1922, over 84 per cent of all municipal establishments were in towns of less than 5,000 population. If the size of the municipality is increased to 25,000 population, almost 98 per cent (2522) of all municipal establishments are included. Only 0.6 per cent of municipal companies were in cities of 100,000 inhabitants or over.

In addition, 52.4 per cent of the value of plant and equipment, 64.8 per cent of the revenues, and 68.4 per cent of the number of customers, in 1922 were in cities and towns of less than 25,000 population.

These data taken from United States Census reports indicate the part

PUBLIC UTILITIES FORTNIGHTLY

that municipal ownership and operation had come to play in the smaller cities, towns, and hamlets during and immediately after the war.

ALTHOUGH municipal ownership is confined largely to small centers of population, the census of 1922 nevertheless listed 59 municipal establishments in cities of 25,000 population and over. Eight of these establishments were in cities of 100,000 to 500,000 inhabitants and eight more in cities of 500,000 population or more. Included in these larger cities are Los Angeles, Cleveland, Seattle, Tacoma, and Jacksonville, Florida.

Most of these larger municipal systems are in competition with private companies and were established with the express purpose of compelling a reduction in rates or an improvement in service. Probably the most notable systems are those in Los Angeles, in Cleveland, with its domestic lighting rate of 3 cents per kilowatt hour, and in Tacoma, with its extremely low rates due to an advantageous situation with respect to hydro-power generation.

These facts are mentioned not only to give some notion of the numbers of large municipal establishments, but also to indicate that the larger cities have installed municipal systems after an unsatisfactory experience with privately owned and operated companies.

THE next part of our inquiry relates to the rapid decline of the number of municipal establishments since 1922. This development has been simply one sidelight of the consolidation and merger process, a process made possible economically

by improvements in the efficiency of large steam-electric turbo-generators and in coal utilization, together with more efficient methods of transmission. As a result, the scale of central electric station operation has expanded in two directions, first, in a much larger generating unit than formerly—now 160,000 kilowatt capacity in some cases—and, second, in greater transmission distances—now 200 miles or more when costs of generation are relatively low.

In order to take advantage of the economies of large-scale operation, the electric companies sought to enlarge the market for their power by purchasing or building additional transmission and distribution lines; in fact, they reduced rates to industries, to private electric companies, and to municipalities, in order to induce them either to purchase current or in many cases to sell their systems to the large-scale private company.

ACCORDING to data compiled by the National Electric Light Association, some 1,412 cities and towns are listed as having at one time or another turned from municipal to private operation. Of this number, 845 places (59.8 per cent) were hamlets of less than 1,000 inhabitants. Another 494 systems were in towns of 1,000 to 5,000 population. Thus 1,339 of the 1,412 municipalities turning to private operation were small towns, villages, or mere hamlets.

Very few of the larger cities (that is over 30,000 population), possessing municipal establishments are to be found in the list, 14 to be exact. Only one city (Pittsburgh) has a population of over 100,000. Besides, others

The Economic Trend toward Fewer but Larger Power Companies

"THE small power systems—municipal or private—have become parts of the super-power, consolidated corporations generally not because of dishonest or inefficient management, but because merger meant economies of operation and lower rates, which would not accrue under small-scale, isolated operation. The decline in numbers of companies, municipal or private, has been due predominantly to technical and economical forces."



either abandoned the municipal system many years ago or had only a plant for street lighting and other municipal purposes. Berkeley, California, disposed of its plant in 1893, a plant which produced only street lighting. Lakewood, Ohio, and Portsmouth, Ohio, both turned from municipal to private operation about 1908. Another city of over 30,000 inhabitants to espouse private operation a good many years ago was Moline, Illinois (in the early eighties).

In fact, of the 14 cities mentioned in the National Electric Light Association survey, only 5 have chosen to change from municipal to private ownership since 1922. At the same time, not one of the 16 municipal systems serving cities of 100,000 population or more in 1922 has chosen to change over to private operation.

THESE facts merely serve to emphasize again the point made above, namely, that the rapid disappearance of municipal establish-

ments is to be found only in the extremely small towns and villages; in the larger cities there is no marked movement away from municipal ownership and operation.

It is important to note that the small systems—municipal or private—have become parts of the super-power, consolidated corporations generally not because of dishonest or inefficient management, but because merger meant economies of operation and lower rates, which would not accrue under small-scale, isolated operation. That this decline in numbers of companies—municipal or private—has been due predominantly to technical and economical forces and not to inefficient management has been recognized by most students of the electrical industry.

Not all municipal systems, which have been purchased by private companies, are expected to aid the new owners through further economies of operation. In some cases, excessive prices (overcapitalization of the earnings) have been paid for municipal

PUBLIC UTILITIES FORTNIGHTLY

establishments because of a desire to eliminate municipal ownership or because of an expectation of recouping these outlays later through ineffective state control of rates and service.

Furthermore, some cities and towns have disposed of their establishments—often at a heavy loss—because of the chicanery or incompetence of public officials, the ignorance of the public, or actual or threatened price cutting where the private company was in a position to compete with the municipal establishment. On the whole, however, it is undoubtedly true that the vast majority of municipal systems, which have been sold to private companies, have disappeared before the irresistible advantages of large-scale, consolidated operation.

III

THUS far the tacit assumption has been made that the small, isolated municipal establishment has uniformly given way to super-power systems.

Such is not the case.

According to a preliminary report issued by the United States Census on August 17, 1927, the significant reductions in municipal ownership have occurred in only 20 of the states, including Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia (all southern states), and Illinois, Michigan, Minnesota, Ohio, and Pennsylvania (principally in the eastern and middle-western section). These states, all with a substantial amount of municipal ownership in 1922, had a combined loss of 370 establishments or somewhat more

than 20 establishments per state.

In contrast with this situation, the preliminary report disclosed an actual increase in the number of municipal systems in 13 states between 1922 and 1927, the significant increases occurring in California, Colorado, Iowa, Kansas, Massachusetts, Nebraska, Utah, and Wyoming. No change was noted in Connecticut, Idaho, and Rhode Island. Thus 16 of the 48 states, including Kansas and Nebraska with more than 200 municipal establishments apiece, either experienced no decline or an actual increase in numbers.

THERE appear to be at least three reasons for this contrast in development:

First, most of these states in which municipal ownership has declined are in the Appalachian Mountain area, which contains valuable hydro-power sites and deposits of high quality coal, both of which facilitate the development of highly efficient generating plants. An extensive interconnected electric system must have low cost generation per kilowatt hour in order to overcome the expenses of long distance transmission. The fact that a large majority of the municipal establishments which have been discontinued in recent years, were in states in close proximity to coal and hydro resources and where large private electric systems have developed since the war, is evidence of this relationship.

Second, the density of the number of isolated establishments—municipal or private—in any given area, has been a factor. In states with a high density of small isolated municipals,

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Georgia, Illinois, Michigan, Ohio, Oklahoma, and Minnesota, among others, it required fewer miles of transmission line on the average to connect the various distributing systems with central generating plants than it does to connect the widely scattered municipals in California, Colorado, Utah, Washington, or Wyoming. Hence, it was more profitable for the private companies to purchase municipal establishments in the former than in the latter groups.

A final consideration, which has caused the municipals to disappear more rapidly in the South and Middle-West than in other sections of the country, may be termed the "drive" of certain power utility executives in the former area. It is pretty generally true that the large private establishments have sought out the municipals for purchase more often than the municipal establishments have approached the private owners with the same purpose in view. Undoubtedly, many municipals have sold or otherwise disposed of their electric light and power plants both in the South and Middle-West because of the aggressive action of the few leading executives in these areas. When such pressure is absent, the cities and towns already operating electric plants more often retain them.

IV

THE preceding analysis has dealt with municipal establishments, regardless of whether the municipality generated or purchased the power it distributed to consumers. It is important to ascertain, however, what the trend of development in this direction has been in recent years.

Studies completed by Professor Dorau and others under the direction of the Institute for Research in Land Economics and Public Utilities for the states of Wisconsin, Massachusetts, Missouri, and Minnesota, reveal quite clearly the fact that a much larger proportion of municipals are purchasing energy than ever before. Until 1919, more than one-half of the 105 municipal establishments in Wisconsin generated all of the current distributed. In 1926, only 25 out of the 90 municipals generated all or even part of the energy sold to consumers.

In Massachusetts, this movement has been even more striking. Until 1914, at least one-half of all municipal establishments there generated all of the energy distributed. After 1914, in spite of a slight growth in the number of establishments from 39 in 1914 to 42 in 1926, the ownership of generating equipment so declined that no municipally owned generating plant remained in 1923. Similar trends were observed in Missouri and Minnesota.

For the United States, as a whole, according to United States Census figures, more than three-quarters of municipal establishments generated at least part of the electricity distributed until 1917. After 1917, the movement away from generation and towards purchase was rapidly extended. According to the United States Census of 1922, only 1,739 (out of a total of 2,581) municipal establishments generated all or part of the energy distributed, leaving 842 establishments to purchase all energy from other sources. For 1928, it is estimated by the *Electrical World* that

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not more than 1,120 generating plants remained among the 1,910 municipal establishments then in existence.

THESE data help to explain, along with other factors, why the private systems have been unable to absorb more than a fraction of the municipal systems in such populous states as Massachusetts, Iowa, Missouri, Wisconsin, and Minnesota. The people apparently are in favor of retaining their distributing systems and disposing of their generating plants. Thus there is developing a mixed system of municipal and private ownership which promises to go farther before an end is reached.

V

IN the preceding sections, I have dealt with the number and location of municipal establishments and drawn some comparisons, in these respects, with "commercial" or private establishment. Let us now note the importance of municipals, absolutely and relatively to private companies, as shown by value of plant and equipment, gross revenues, kilowatt capacity, number of consumers, number of employees and number of towns served.

In spite of the decline in the totals of municipal and private establishments since 1917, the electric light and power industry has gone forward rapidly during the past decade or so.

Between 1917 and 1928, the capital invested in the industry rose from \$3,245,000,000 to \$10,300,000,000; the gross revenues increased from \$526,000,000 to \$1,908,000,000; the energy generated and imported increased from 26,663,000,000 to 84,-

700,000,000 kilowatt hours; and the number of customers advanced from 7,178,000 to 23,400,000.

Most of this expansion has taken place under private auspices, and serves to emphasize a condition which has always prevailed—that either in terms of totals or averages, only a small fraction of value of plant and equipment, of revenues, of sales, of consumers, or of employees, has been under municipal auspices. The pertinent data are brought together in the following paragraph.

IN 1922, according to United States Census figures, the value of plant and equipment of municipal stations was only 5.3 per cent of the total value of all stations; their gross revenues from the sale of energy, 8.2 per cent; their expenses, 7.8 per cent; their dynamo capacity, 6.3 per cent; their output, 4.9 per cent; the number of their employees, 9.7 per cent; and the proportion of customers served, 12.9 per cent.

In addition to controlling practically the entire electric light and power industry, the average private station is much larger than the average municipal station. Considering the total of 6,355 establishments operated in 1922, it appears that the average value of plant and equipment was \$1,120,656 for private stations and \$91,306 for municipal stations; the average total revenues for the year were, private stations, \$261,443 and municipal stations, \$33,102. The private companies served on the average 2,936 customers, while the municipals served 637 customers.

In terms of ratios, the private companies on the average owned plant

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and equipment valued at about 12 times the value of similar municipally owned property, received about 8 times as much revenue, and served nearly 5 times as many customers.

Data published by the National Electric Light Association for 1927 show that on the whole these discrepancies in favor of large scale private operation have increased slightly in recent years. Even so, it is surprising to learn that in spite of a decline in the number of cities and towns served by municipals from 2,940 in 1922 to 2,250 in 1927, and an increase of cities and towns served by private companies from 12,953 in 1922 to 17,750 in 1927, the percentage of energy supplied to consumers by municipals remained constant.

Apparently, municipal establishments, although losing out in the extremely small hamlets, are attracting customers even more rapidly than the private companies in the larger towns and cities.

Nevertheless, the fact remains that municipal establishments secure a very small proportion of the electric light and power business of the country—even in sales to domestic consumers, their chief field of operation.

Why?

VI

UNDOUBTEDLY, many reasons for this situation might be dis-

cussed, but three seem worthy of special mention.

In the first place, the public in this country is now and always has been skeptical of the merits of public management which it believes to be incompetent and corrupt. This fact is well known and has been effectively used by political and industrial leaders to keep the public from becoming too much interested in government ownership. Probably, it will take an extraordinarily convincing showing of the superior merits of municipal ownership over private ownership to change this attitude, although the existence of about 2,500 municipal stations in 1922 serving over 1,640,000 consumers in 2,940 cities and towns suggests that these fears apply only partially to this utility.

Aside from the traditional prejudice against government ownership, one must cite certain difficulties encountered by municipals, but not by private owners, and all apart from questions of chicanery or other public immorality.

The states often restrict municipal activities within the confines of the city limits and thus keep the municipals from making advantageous contacts with other municipalities or the citizens of out-lying areas. No similar limitations are ordinarily laid upon the private companies. The municipal systems can not, therefore, gain the advantages of interconnec-



Q "THE people apparently are in favor of retaining their distributing systems and disposing of their generating plants. Thus there is developing a mixed system of municipal and private ownership which promises to go farther before an end is reached."

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tion and highly specialized engineering and management now accessible to private plants, except by becoming a part of privately owned interconnected systems.

Furthermore, frequent changes of public officials and the absence of adequate salaries tend to keep the quality of municipal management somewhat below that secured by private capital.

Finally, many states limit the bonded indebtedness of municipalities to a certain amount, and this forces the city or town to have private utilities, including the electric light and power system, if the city or town is already bonded near the limit.

These are three important reasons why it is difficult to manage a municipal plant as well as a private one, and, therefore, why it has been difficult to secure the establishment of municipal systems—even granting the public wanted them.

A THIRD major cause of the failure of municipal ownership to make greater strides is the ignorance or indifference of the small domestic users towards the problem of control of rates and service, particularly rates. Few Americans seem to know that municipal ownership in Ontario, Canada, has secured for domestic consumers, that is, household users, unbelievably low rates without placing any burden on the taxpayers (except for rural electrification) or the commercial and industrial power users of the province.

In 1928, the municipalities served by the Hydro-Electric Power Commission of Ontario distributed 86.8 per cent of the kilowatt hours sold for domestic service at an average

charge of 1.9 cents or less per kilowatt hour. About 12.1 per cent more was sold at an average charge of 2.0 to 3.9 cents per kilowatt hour and only 1.1 per cent was disposed of at an average charge of 4.0 cents or more per kilowatt hour. The average charge for all domestic service was about 1.8 cents per kilowatt hour.

A recent study of electrical rates in New York state indicates that the average charge in that state by private companies for domestic service was about 5.6 cents per kilowatt hour in 1926. Since the Ontario Hydro Power system pays only a small amount in taxes, some allowance should be made for this element in favor of the private companies. Experience has shown that the portion of revenues paid in taxes by private electric light and power companies in the United States averages not more than .15 cents per kilowatt hour, an amount which, if added to the average charge of 1.8 cents in Ontario, would not raise the cost to domestic consumers above 2.3 cents per kilowatt hour. This still leaves a discrepancy of over 3 cents per kilowatt hour in favor of municipal operation.

Part of this is due, undoubtedly, to the influence of low cost generation made possible by Niagara Falls, which is responsible for some 85 per cent of all power sold by the Hydro-Electric Power Commission. But this does not explain all, for we find that the Buffalo General Electric Company, using power generated at Niagara Falls, charged domestic consumers in 1926, on the average, 3.4 cents per kilowatt hour, or nearly double that of the whole Hydro Power system including cities far dis-

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tant from sources of supply (Wind-sor) or served by higher cost hydro power stations (Collingwood in the Georgian Bay System).

If rates in Buffalo are compared with those in Hamilton, Ontario, the discrepancy is made a little more real. In 1926, according to Professor W. E. Mosher of Syracuse University, an ordinary domestic consumer using 36 kilowatt hours per month, with a permanently connected load of 1 kilowatt, in a house of six rooms and a floor area of 1,400 square feet exclusive of unused basement and attic, paid 95 cents (2.6 cents per kilowatt hour) in Hamilton and \$1.59 in Buffalo (4.4 cents per kilowatt hour). Hamilton is not only a much smaller city than Buffalo, but it is about twenty miles farther distant from the source of power at Niagara Falls.

IT is believed by some that the low rates to small domestic consumers in the Hydro Power system are made possible only by placing the rates on industrial power somewhat higher than necessary. If power rates in Western New York are a criterion for judgment, it is an undoubted fact that users of power in Ontario are again the recipients of lower rates except when the amounts consumed are very large.

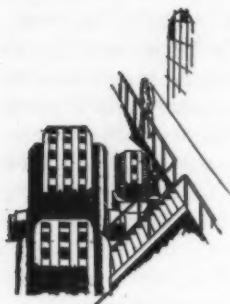
Again comparing Hamilton and Buffalo, the small user of industrial power in 1926, consuming 2,000 kilowatt hours per month, with a connected load of 10 kilowatts, a power factor of 85 per cent and with no restrictions as to hours or month of usage, paid a rate of \$23.19 (1.16 cents per kilowatt hour) in Hamilton and \$35 (1.75 cents per kilowatt

hour) in Buffalo. If the consumption of industrial power is raised to 288,000 kilowatt hours per month, with a measured demand of 1,000 kilowatts, a power factor of 85 per cent, a voltage of 4,000, and no restrictions as to time of use, the rates favor Buffalo slightly. The cost in 1926 for this power in Buffalo was \$2,379.75 (.83 cents per kilowatt hour) and in Hamilton \$2,427.64 (.84 cents per kilowatt hour).

The conclusion is obvious, therefore, that this "league of municipalities" in Ontario, which must meet fully all items of cost, including operating expenses, depreciation, interest, and rentals, as well as retire its bonds in a definite period of time and create reserves for contingencies and obsolescence, and, at the same time, can cut domestic charges to an average of 1.8 cents per kilowatt hour without burdening the taxpayers or other classes of consumers, must cause the public to wonder at the reasonableness of domestic light rates in the United States. As yet, however, little has been done by citizen groups to investigate the situation.

NO municipal light and power system in the United States can be compared with the Ontario "league of municipalities," either as to extent of operations or low rates charged. Nevertheless, the municipal systems in many cities and towns are able to meet all operating and fixed charges and retire the bonds against the property at rates which are either no higher or actually less than those charged by private companies operating under the same conditions in the same area.

For example, the domestic consum-



The Advantages to the Ratepayer of Interconnected Companies

"PRIDE in municipal ownership (an undoubted fact in many cities and towns), will sooner or later be forced to accept private ownership, if privately owned interconnected systems make possible lower rates than small scale isolated municipal systems. Furthermore, there is no evidence of any recent development of sentiment in favor of municipal ownership, and the role played by this method of control will probably decline in relative, if not absolute, importance."

er may purchase power from the Cleveland Municipal Company at a rate of 3 cents per kilowatt hour, whereas in the neighboring city of Columbus, Ohio, which is served by the privately owned Columbus Railway Power & Light Company, the charge is 6 cents per kilowatt for the first 50 kilowatt hours per month, 5 cents per kilowatt hour for the next 75 kilowatt hours per month, 4 cents per kilowatt hour for the next 100 kilowatt hours per month, and 3 cents per kilowatt hour for all over 225 kilowatt hours per month. Both of these establishments are in a prosperous financial condition, yet the municipally served domestic consumer enjoys considerably lower rates than the privately served domestic consumer.

WHERE the municipal does not lower its rates to consumers below the level generally charged by private companies in the same territory, it has been possible in some cases for small cities and towns to

meet all operating and fixed charges as well as to contribute power free for city purposes and to contribute to the general fund whereby certain services—such as city hospital benefits, public health nursing, and sewage disposal—are rendered to the community below cost. Princeton, Illinois, a town of a little more than 4,000 population, between 1900 and 1914, received enough in revenues to meet all taxes, principal, and bond interest incurred in the construction of its electric light and power system, and, at the same time, to meet all the economic costs of operation. Recently this town, through the installation of modern Diesel generating equipment, has been able to lower rates to a level slightly less than that proposed by the Illinois Power & Light Company which wished to purchase the Princeton plant. Along with this reduction in rates, the city of Princeton has continued to furnish free services to its citizens from surpluses of electric light and power revenues.

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IT is not safe from these examples to offer the generalization that municipally owned companies will in all cases be able to operate successfully at rates equal to or less than the schedules generally applied by privately owned companies. The fact, however, that such cases of successful operation may be found should, if known, cause domestic consumers to ask whether the domestic rate structure in this country is not somewhat higher than necessary or whether municipal management may not under certain circumstances secure lower rates—assuming that private management has already fixed its rates on a basis consistent with reasonable earnings.

VII

IF the data here presented are accurate and representative and the analysis sound, the following conclusions would appear to be warranted:

First, that the number of municipal establishments increased until 1922 and decreased after 1922.

Second, that the number of private systems, although more numerous than municipal systems, have declined in number since 1917 and today are actually in the minority.

Third, that the municipal establishments are located primarily in small cities and towns and hence are small scale in character, although some sixteen cities of more than 100,000 population possess municipally owned plants.

Fourth, that the decline in the number of municipal establishments after 1922 occurred among the smaller cities and was primarily a phase of the consolidation movement which

eliminated even more rapidly the small privately owned electric light and power plants.

Fifth, that the decline in the number of municipal establishments was not uniform throughout the United States, but was confined largely to the southern and middle western portions of the country where cheap hydro and steam generating power, together with a high density of isolated plants, created a favorable situation for the development of extensive interconnected systems.

Sixth, where such favorable conditions were lacking, or where the municipal operating unit was large in scale, or where there was a disposition to retain distributing equipment and purchase power from private companies, municipal establishments tended either to hold their own or actually to increase in numbers.

Seventh, that a marked tendency for municipals to distribute purchased power in recent years was noted.

Eighth, that municipal systems, in terms of value of plant and equipment, of gross revenues, of kilowatt capacity, of output and of number of consumers, have always been of relatively small importance in the electric light and power industry.

Ninth, that this failure is probably due to a variety of causes, chief of which are the widespread skepticism of the competency and honesty of public management, the legal and technical difficulties which place municipalities at a disadvantage in comparison with private ownership and operation, and the ignorance and indifference of the small domestic users toward the problem of public control of rates and service.

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So far as the immediate future is concerned, it seems highly probable that a considerable number of municipal establishments will continue to disappear and large operating units under private ownership will be in turn substituted.

Pride in municipal ownership (an undoubted fact in many cities and towns), will sooner or later be forced to accept private ownership, if privately owned interconnected systems make possible lower rates than small scale isolated municipal systems.

Furthermore, there is no evidence of any recent development of sentiment in favor of municipal ownership, and the role played by this method of control will probably decline in relative importance if not in absolute importance.

NEVERTHELESS, the writer does not believe that the present rate of decline in the number of municipal establishments will be maintained until all have disappeared. When con-

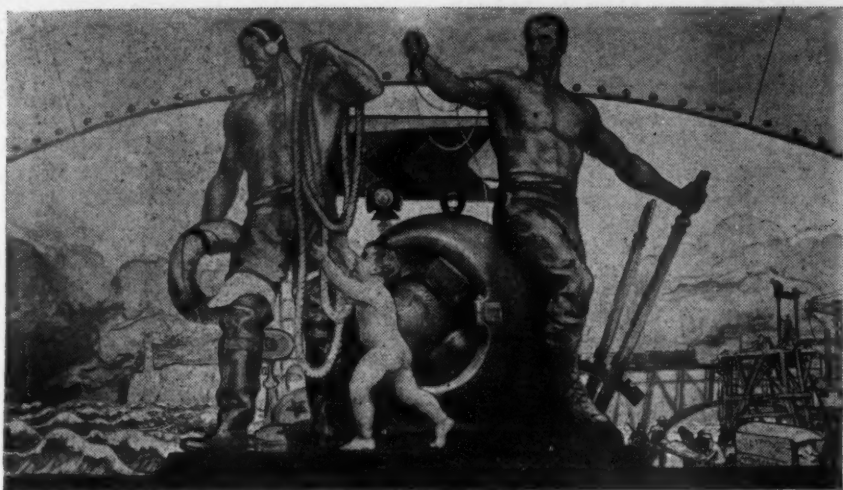
ditions of generation and transmission are not favorable to interconnection, municipal establishments will be able to compete in rates and service with the private companies. Even when conditions are favorable to interconnection, local pride, inertia, a desire to frame a financial policy for both local utilities and city government as a whole, and a belief that state regulation of private companies fails to assure low rates to domestic consumers, will tend to keep in existence a considerable number of small municipal electric light and power systems.

Besides, the larger cities, already operating electric plants, have the advantages of an extensive market as well as large, efficient, generating units, without the disadvantage of heavy transmission costs from bus-bar to distribution lines. There seems to be no reason, on economic grounds, why these plants should not continue to operate indefinitely under municipal ownership.

Municipal Plants Are Regulated by State Commissions in One Third of the States

OUT of the forty-eight jurisdictions (including the District of Columbia), the state regulatory Commissions have authority over the rates of municipal plants in only sixteen states; they lack such powers in the remaining thirty-two jurisdictions.

Of these sixteen states in which the state Commissions exercise regulatory authority over municipal plants, only four lie west of the Mississippi.



From a painting by Fred Dana Marsh

Old Man Competition Is Not Dead Yet

THE struggle of rivals for business, sometimes spoken of as Old Man Competition, is popularly thought to have been chased off of the utility field by state regulation of public service companies.

We know that if a utility company once gets a territory, and behaves itself, the Commission will not let another company of the same kind in. This, we say, gives the established company a monopoly. Many of us think that Old Man Competition, who takes care that charges shall be kept as low as possible in other kinds of business, has thus been kept at a safe distance, so far as utilities are concerned.

So the feeling is that the Commissions must keep a sharp eye on public utility rates; and that any failure to do so would mean extortionate charges.

The fact, however, is that the Old Gentleman is probably laughing in his sleeve at this monopoly talk. He must still be reckoned with in the utility business. He has no intention of getting out.

We could scarcely say that street railways have a monopoly of the local transportation business. Old Man Competition can be recognized in every community served by an electric railway.

Probably more has been said about high rates for electricity lately than about any other kind of utility service, although charges for this service have been steadily going down. Now, Old Man Competition is very active in the electric field. The bulk of the electric business is its power service. Here it is in direct competition with private plants. The building in which our offices are located is supplied by the owners' own electric plant. A public utility company could not get that business except on a competitive basis.

Domestic electric service would be a luxury were it not for the power business and the power business could not be obtained except on the terms laid down by Old Man Competition.

So it goes. Old Man Competition is a hard fellow to down.

Harry C. Spurr



Cost *versus* Value

Which should be the measure of payments made by operating utilities for administrative and engineering services performed by a parent or affiliated company?

By LUTHER R. NASH

WE are told by certain students of public service history that regulation of public utilities by the Commissions charged with that duty has "broken down."

With only one exception, the history of regulation of local public utilities by State Commissions has been written within the past twenty-five years, and the major part of it in a much shorter time. Much of that time has necessarily been devoted to the development of methods and policies and the observation of the results of their application.

In the meantime, new and perplexing problems have arisen, some of which still await solution. While we may be critical of mistakes or failures, it is not yet time to contend fairly that the whole plan of regulation has been proven unsound or otherwise a failure. Still less does it seem logical for those who claim that regulation has broken down to propose public ownership as an alternative.

If the best talent available for pub-

lic office does not make good on the job of general supervision, how could it be expected to succeed with the far more complex problems of management and operation?

As a matter of fact, there is abundant evidence that regulation has not broken down and that the problem is not one of substitution but, rather, of improvement in technique.

Among the problems which regulatory bodies are studying is that of the holding company.

This term "holding company" is here used to refer to not only the control of public utilities exercised through stock ownership but, more particularly, to certain associated or affiliated activities, including engineering, executive supervision, and financing. The term "engineering" as generally used herein covers supervision of construction or even organization of actual construction forces.

As consolidations and reorganizations have occurred with be-

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wildering frequency and the number of independent properties has correspondingly diminished, there has been increasing concern lest in some way regulatory control should become similarly less effective. The contention that regulation does not deal with outstanding securities or their owners but, rather, with the value of the property devoted to public service, is sometimes met with the answer that over-capitalization of the holding companies and demands for return thereon may lead to unwise economies or curtailment of utility service or expansion policies which may be as detrimental to the public interest as increases in rates. Even if regulation succeeds in preventing these abuses, it is feared that holding company income will be augmented and cost of operating company service unduly increased by sundry fees exacted by the holding company for professional services.

There are differences of opinion as to the extent to which such fees are subject to regulatory control. It is contended, on the one hand, that decisions of our Supreme Court place the burden of proof of fraud or abuse of discretion upon the Commission which proposes to reject or modify fees of this character, and that such proof is rarely possible of presentation in conclusive form and detail. On the other hand, we have decisions of Commissions which undertake to place the burden of proof of reasonableness upon the operating company that has made the charges on its books. In certain cases the Commissions have gone even further.

It is with these cases that this article is primarily concerned.

THE cases in question involve charges to utility fixed capital or operating expense of fees of a holding company or fees of a service organization owned by this holding company. Certain Commissions have held that they would approve such charges only to the extent of the *actual cost of the services to the organizations rendering them*, such cost to be demonstrated to the Commission's satisfaction. The value of the services to the operating company or the fees customarily charged by independent agencies rendering similar services were not recognized as competent evidence.

TO the layman, the idea of limiting the charges for professional services to their actual cost is not only novel but also has possibilities of far-reaching consequences.

What is "cost?"

As far as a normal engineering office is concerned, the determination of current operating costs involves no special difficulties to an experienced accountant. The typical consulting engineer has, however, no physical plant except office equipment and records. His real fixed capital is his engineering training and years of professional experience. Their value is unquestionable; yet they cannot be appraised in dollars and cents.

While the cost of an engineer's intangible assets is not controlling, it is worth while to remember the years spent in technical education and studies preparatory thereto and the still longer period often spent over the drafting board or in detail work on construction jobs before he is prepared to assume responsible direction

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of surveys, design, and execution of any important projects.

A study of the financial history of engineer graduates of technical schools shows that the average period after graduation before the wage level of a capable student equals that of a skilled mechanic is at least six years, and that the income of a good salesman lacking similar educational background is duplicated only after ten years or more of professional work. To such periods of deficient income should be added the expenditures during years of education. The total with interest accumulations yields a substantial sum but, as already stated, in no sense does it measure the assets of a successful engineer. Real success also involves the development of a skilled, specialized organization, the selection, sifting, and training of which may involve substantial costs. Failures or mistakes in judgment of principals or subordinates and resultant reflections upon professional standing, which must be painstakingly overcome, are added elements of cost. It would never occur to a prospective client to ask for any such appraisal of intangible assets. He is concerned only with the engineer's fees and the results which his skill and reputation may be expected to produce.

WHAT, then, is the logical reaction of a successful consulting engineer to a proposition that he serve a public utility at the actual cost to him of the service rendered?

The answer is obvious. If he is independent, he will, of course, select his clients from those who can pay his established fees. It is no concern

of his if public utilities accept the theory that they are clothed with a public interest and must serve the public at cost. Such theories have no application to his professional and competitive field where value is the basis of charges.

But, not all engineers are independent in the sense above used. In ignorance of or not anticipating the complications here considered, some of them have acquired substantial interests in the stock of utility clients which their contacts have shown had promising futures. Why should such holdings, even if they amount to control, affect the fees customarily charged for professional service? It is not uncommon for executives and attorneys connected with public utilities and also rendering service of a professional character to have substantial stock holdings therein and exert a real influence upon policies and activities, but it has not yet been proposed that they should be paid on a cost basis. If or when this is proposed, it would be logical to extend the cost plan to the whole great body of employee stockholders, and an economical scale of living would then be one of the essentials of employment.

ASSUMING that a consulting engineer who was also a holder of stock of a utility client was willing to forego customary profits, how could he figure costs?

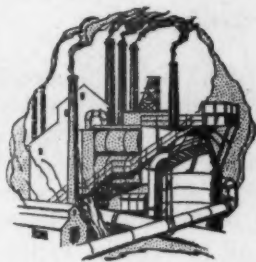
The conventional cost analysis adds office rent and service, idle time, administrative costs, fixed charges, and taxes, to payroll rates to determine actual costs of productive time. Profit is a further factor in fixing conven-

The Extent to Which Professional Fees Can Be Regulated

"THERE are differences of opinion as to the extent to which such professional fees are subject to regulatory control.

"It is contended, on the one hand, that decisions of our Supreme Court place the burden of proof of fraud or abuse of discretion upon the Commission which proposes to reject or modify fees of this character, and that such proof is rarely possible of presentation in conclusive form and detail.

"On the other hand, we have decisions of Commissions which undertake to place the burden of proof of reasonableness upon the operating company that has made the charges on its books. In certain cases the Commissions have gone even further."



tional billing rates. In the case of professional service the most important asset of experience and reputation is not provided for in the usual fixed charge item of cost, and constitutes a distinctive element without possibility of mathematical determination.

It is noteworthy that in certain proceedings relating to the cost of hydro projects under government license it has been contended by Federal agents that the only permissible engineering costs to be included were those representing the bare payrolls of engineers during the time they were actually engaged on the project works, plus other proven out-of-pocket costs. It has even been proposed that the "plus" items be excluded. This is a still more drastic contention than that of the regulatory Commissions previous-

ly considered and goes beyond any known precedents or conceptions of equity.

From the beginning of civilization the engineering profession has been an honorable one, attracting men of outstanding ability and integrity. Their work, monuments to their genius, covers not only land and sea but is also found above and below both. Some of these monuments have performed useful service for centuries. In recent years this profession has established a code of ethics for the conduct of its members, including a detailed schedule of reasonable fees for various kinds of service. These standards have been generally recognized by reputable engineers, regardless of the permanence of relations with their clients. It is not believed that the profession will submit to any

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basis of charges that fails equitably to recognize its standing and accomplishments, to say nothing of one which fails to provide even for current operating costs. To do so would be a reflection upon its honorable record and its established ethical standards.

IT may still be contended that a holding company which furnishes professional services to a subsidiary, or causes them to be provided by another subsidiary, is in a unique position, particularly if the clients served are all subsidiaries to the exclusion of other general practice upon which the conventional engineer relies. If there is any significant distinction here it lies in the fact that a very large organization, performing a particular type of work, can procure the services of highly trained specialists for different parts of the projects and that their combined efforts, supervised and co-ordinated by experienced executives, will produce better results at lower construction costs than could a smaller, less specialized group of engineers. Both services and fees charged therefor are standard and competitive, and there is no difficulty in comparing either with those of independent agencies. The costs of work done by a large organization may be less than those of a small one but this has not been advanced as a reason for lower charges. The dividends which a holding company stockholder receives are no different from those paid to other stockholders and, so far as they come from operating utilities, they are, of course, subject to the prescribed regulatory supervision.

IN spite of our failure to establish any logical distinction between engineering fees of holding companies and of independent organizations, we may pursue the subject further for other developments which would logically follow any acceptance of the cost theory.

If a public utility, operating at cost, is bound to see that all its costs are reasonable, and may in turn demand cost as the basis of certain services rendered to it, why not all services and also all materials?

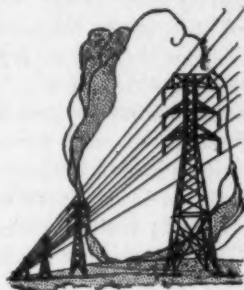
And, if by some chance this theory were accepted, why not apply it to employees of consulting engineers and to raw materials and labor required by manufacturers in making equipment for utilities?

If so applied, why not extend it still further to servants of employees and producers of raw materials?

IF the fact of financial control were really of vital importance, as some profess to believe, these further applications of the cost theory would not be logical, but we have seen that there is no lack of adequate means of comparing charges made under such control with similar ones where control is absent. If excessive charges are found, and reasonable proof thereof is available, they are subject to exclusion from utility fixed capital or other accounts by regulatory authority. If adequate regulation is lacking in certain states, it is by choice of their citizens who may apply standardized remedies if or when the need is apparent. We are, therefore, forced to the conclusion that competition is effective here as in general trade and industry to stabilize

The Rule of Value Governs Utility Purchases

"ONE looks in vain over the wide range of public utility expenditures for exceptions to this rule. It pays prevailing prices for generators, wire, and other materials, some of which are patented and of exclusive manufacture; also for personal services of all kinds from firemen to executives. Its attorneys' fees are certainly not based on current costs of running legal offices but on the training, skill, and successful experience of the men employed."



prices, and that neither the proposed cost theory nor the suggested and obviously fantastic extensions are necessary under any existing circumstances.

Should theory rather than equity prevail in any jurisdictions, and existing or proposed regulations be persisted in, the engineering profession is confronted with two alternatives: to quit the public utility field as previously suggested, or to prove that such restrictions are not only at variance with sound business practices and ethics but also inconsistent with established legal principles and constitutional rights. We may safely assume that it will adopt the latter alternative with expectation of a successful outcome. There is another purpose in this procedure. This profession has been sufficiently prosperous to have funds available for investment. Utility investments are among the most attractive in the market. The rights of engineers to make such preferred investments will not be relinquished, because of professional relations, without equally definite protest.

IT is unthinkable that either laws or regulation will operate to deprive public utilities, through niggardly compensation, of the services of the engineering profession, of which it has greater need than any other industry. This industry is primarily indebted to this profession for its unparalleled growth, its unique contributions to social and industrial welfare, its remarkable increase in efficiency, and its aid in conservation of natural resources. The return which the cost of this service has yielded is beyond computation.

THE second class of professional services under consideration involves some added complications. It deals with management service or executive supervision of operations and broad financing and administrative policies. The number of organizations which offer such services to public utilities is limited. Some of them undertake to serve only properties in which they have some financial interest, usually amounting to control through stock ownership. If all executive supervision of public utili-

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ties were of this character, close scrutiny of the charges therefor would be appropriate.

But such is not the case.

It is not difficult to find instances of such supervision with only nominal stock holding or none at all. The continuance of such service depends upon its accomplishments, as in the case of ordinary personal service. The records include cases in which such service has been drafted, against the best judgment of the service organization, because of some previous contacts.

It may be that such cases are exceptional and that, ordinarily, financial control or interest is a factor in arranging or maintaining service contracts. In such cases a yardstick for measuring the charges is needed. Should this yardstick be cost to the seller or value to the buyer? There are no recorded, adjudicated cases in which the former basis has been applied and sustained. There are many cases of acceptance of the latter, some of them approved by our supreme court. Value or saving as compared with the cost of a substitute service is set forth in detail in the record of many cases covering all classes of utility service.

OTHER yardsticks are also available, among them the charges of independent agencies for similar service. Furthermore, executive supervision is not limited to the public utility field. Other commercial and industrial enterprises are making increasing use of the plan in one form or another. The author recalls one interesting case in which centralized supervision of a large group of bak-

eries was patterned closely on public utility practice with very satisfactory administrative, technical, and financial results. Moreover, there are countless cases of the employment of individuals to rehabilitate and manage unsuccessful projects at salaries well known to have no relation to the cost of the service rendered.

Clearly, value is the universally accepted basis of such service and the yardsticks, above referred to, should be suitable for measuring or checking that value in specific, unusual cases. One looks in vain over the wide range of public utility expenditures, either operating or capital, for exceptions to this rule. It pays prevailing prices for generators, wire, and other materials, some of which are patented and of exclusive manufacture; also for personal services of all kinds, from firemen to executives. Its attorneys' fees are certainly not based on current costs of running legal offices but on the training, skill, and successful experience of the men employed. If these fees were criticized, successful attorneys would promptly transfer their attention to satisfied clients, and the less costly substituted legal advice would probably prove more expensive in the end.

FINANCING fees, which are also criticized, are controlled by keen competition in the money markets, and there is no opportunity to impose excessive charges without detection. It has been alleged that capital inflation in connection with consolidations or mergers offers undue opportunities for profits to the promoters. No such inflation can change the value of the physical property

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upon which capital is directly or indirectly based, or the income derived from its operation. In connection with some such transactions, however, it may appear that unusual fees have been disbursed in the form of stock rather than money. This is a form of contingent fee such as is sometimes encountered in other professions. The ability to see the possibilities of economy and expanded service in large, co-ordinated projects, and the aggressiveness to work them out, rightfully command a liberal reward.

If public utilities cannot offer such reward, other industries can and will.

WITH all these available means of checking the reasonableness of charges for services of holding companies or their affiliated organizations there appears to be little excuse for the use of a new untried, illogical, and depressing substitute. The word "depressing" is here used in the sense of depriving the industry of its basic stimulus. Public utilities, particularly electric power companies, have had a sustained and unparalleled growth because the field has attracted men of outstanding ability to whom belongs the credit for exceptional technical, financial, and business achievements. Whether such men are connected with

operating or holding companies, or independent organizations, they are no different from other men in their desire to be fully compensated for their services and to accumulate a proportional estate. It is difficult, often impossible, for the average man to appraise the value of exceptional executive or professional capacity. The only effective appraisal of such capacity is in the fields where it is needed, and there it has a tangible market value. A man whose accomplishments are outstanding is known and sought after in the business world, and his compensation is fixed by competitive bidding. If his activities are professional, like those of a surgeon, lawyer, or other consultant, his services may be in such demand that he can raise his fees and, also, if he desires, curtail the volume or scope of his services.

THE public utility industry has paid large sums in salaries, fees, or other compensation to its leaders who have conceived and carried on its developments. As measured by results the cost has been small as compared with costs and results in other fields where criticism has been absent. The opinion has been expressed that much of the recent criticism of public utility supervision is due to failure



Q "It is unthinkable that either laws or regulation will operate to deprive public utilities, through niggardly compensation, of the services of the engineering profession, of which it has greater need than any other industry. . . . It is the height of folly to assume that any man or group of men will continue to work in the public utility field or any other where their services are neither appreciated nor compensated."

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adequately to appraise its integrity and accomplishments.

Dr. Albert Shaw, whose many years of observation of economic and political conditions and impartial opinions thereon are well known, embodied the following statements in a recent editorial:

"The American public, at times in the past, may have derived some actual benefit from government regulation of corporate activities. It would be hard to balance losses and gains, up to date, from political restraint upon private enterprise. . . . It happens just now that our corporate managers are, as a rule, on a higher plane both of intelligence and of ethical conduct than are our political managers. The general public needs more protection from bad politicians and ignorant lawmakers than from the men in control of railroads, power companies, and large industries in general. . . . The electrical services, like the oil companies, the steel companies, the railroad companies, and many others, are simply obliged, as the first law of preservation, to do the best they can for the public. The more they are annoyed, bully-ragged, and pecked at, by legislatures and by control-seeking commissioners, the less liberty they have to do their best for themselves and all their patrons and customers. . . . This is not to complain of what we may call the judicial function of boards and commissions. We are only criticizing the assumption of meddlesome kinds of interference under political pressure."

IT is the height of folly to assume that any man or group of men will long continue to work in the public utility field or any other where their services are neither appreciated nor compensated. They may linger temporarily because of loyalty or inertia, but other opportunities will eventually claim them. If legal effort or uninformed public opinion should be successful in forcing a reduction in rewards for service to public utilities, the abandonment of that field by those who have made it one of our largest and most progressive industries will be proportional to the extent of that

reduction. If any responsible tribunal demands such service at cost, the inevitable result will be no service at all.

WE have been passing through a serious business depression. As soon as its proportions became apparent the President undertook the mobilization of resources to minimize its effect. From the beginning public utilities have played an outstanding part in this program. Because of the very concentration of control which has caused so much unfavorable comment, the utilities were able to undertake construction, in the face of industrial depression, in excess of that in the preceding year of unprecedented activity.

Mr. Julius H. Barnes, chairman of the President's industrial stabilization committee and of the board of directors of the Chamber of Commerce of the United States, made the following significant statement at the recent annual meeting of the Chamber:

"It is, for example, difficult to overestimate the contribution to restored business stability which has been made in these recent months by railways and public utilities through construction programs which could not have been financed against the public attitude of repression which existed not so many years ago."

No greater calamity could befall public utilities and, through them, industrial and social progress, than to deprive them of capable and far-sighted leadership. Such a calamity would surely follow to the extent that the cost program under discussion became effective. As far as holding companies are concerned there is little doubt that their charges to operating subsidiaries for services

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should be open to constituted authorities whenever desired and that they should be consistent with the value of the services as measured by accepted standards.

TO summarize the holding company situation as it relates to public utilities, it appears that the only normal sources of income are dividends and fees for engineering, management, and financing. It has been shown that competitive conditions and restrictions apply to all these sources. Aside from uniformity of dividends to all stockholders of a class, it is noteworthy that holding companies usually own only the final equities and can share only in the income remaining after distribution to holders of all senior securities. The same possibilities of large return, of course, exist here as in the case of such holdings in any enterprise, but no more. Engineering services are clearly competitive and the corresponding fees can readily be checked for reasonableness. A study will show a much narrower range of engineering fees in relation to skill than in other professions. Executive supervision is less competitive but there are sufficient data obtainable for suitable checks upon its charges. The consistency of fees

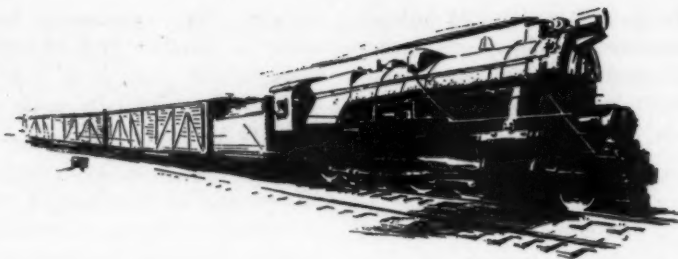
charged for marketing securities needs no further demonstration because of the very large number of dealers who habitually participate in such transactions.

THE above outline covers the ground of the current criticism of holding company income and its sources. Apparently, there has been exaggeration of existing conditions and undue alarm over future possibilities. Secretary of the Interior Wilbur, in a recent statement before the House Committee on Interstate and Foreign Commerce, characterized the criticism of large utility organizations, particularly of their absorption of water power resources, as "wild and not in accordance with the facts."

It is doubtless true that public utility history contains cases of excessive charges and profits based on greed rather than value, but charges of a similar nature may be made against any progressive industry. If, or to the extent that, such conditions can be avoided in the future without making the cure worse than the disease, it will be a progressive step, but the public interest will not be promoted by any such steps as those discussed in this article.

Who Shall Pay for "Free" Car Rides for School Children?

AFIGHT is being made in Washington, D. C., for free street car rides for school children. This is a step beyond free text books. Another step would be free coats and free shoes. Free clothing and shelter for needy parents would be still another step. But none of these things can be free. Somebody has to pay for them. If it is necessary to furnish free rides to school children, the cost should be imposed on the city at large; not only on street car riders. To be compelled to furnish such a service would be like asking street car riders alone to contribute to a community chest for the relief of the needy.



The Power of Public Opinion

III—The Effect on the Railroads

This is the third of a series of articles by Roger W. Babson on the public relations activities of the utilities. The first article treated of the electric light and power corporations; the second of the gas utilities.

By ROGER W. BABSON

IT is a far cry from the "public-be-damned" policy of certain railroad executives of a previous generation to the present-day relationships between the management of our great railroads and the public which they serve.

In those early days our railroads were too often made the football of unscrupulous gamblers, although there were at that time some leaders of the highest integrity in the transportation industry. But today our railroads stand out as among the foremost examples of scientific management, harmonious labor relationships, and satisfactory service to the public. In fact, the increasing efficiency of the Nation's railroads during the decade since the war has been one of the principal factors in maintaining our continued prosperity during that period.

As moves the freight car, so moves commerce, and as moves commerce so are the welfare and happiness of all

of us increased or lessened as the case may be. American business has come to depend increasingly upon the swift and economical transportation of goods and from this dependence there has grown our present "hand-to-mouth" method of purchasing commodities. If there be any break in this web of railroad transportation, it would plunge the country into far greater economic distress today than would have been possible at any previous period.

PRESIDENT Hoover has said that "the greatest industrial accomplishment since the war has been the reorganization of American railroads."

There has not been a shortage of freight cars since 1923 despite the fact that freight business has been larger than at any prior period. Not only has the freight service been adequate, but it has increased in speed and reliability.

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An outstanding improvement in railroad service is contained in the fact that there has been a steady annual decrease during the last few years in the number of accidents on railroads. While this trend toward safety has been due in part to physical improvements on the roads, yet it is fundamentally due to the nationwide "safety first" campaign which has been carried on for a number of years. There is no question but that the large number of accidents of earlier years may be primarily attributed to carelessness on the part of employees and in a measure on the part of the traveling public. Today railroad employees are among the most alert group of workers in any industry in the country in their efforts to safeguard their business from danger, and equally the public has become increasingly conscious of its responsibility in co-operating to prevent accidents.

WHILE (as I have stated before in this series of articles), any business which is linked directly up with the public interest should have some form of public regulation, yet the very best argument for private ownership may be found in a study of the operation of the railroads since they were returned to private ownership after the war as compared with their operation during the war period.

In the last annual report which President Hoover made as Secretary of Commerce, he forcibly drove home this point when he said:

"It is an interesting commentary upon government operation that private enterprise has been able to operate the railways with far fewer em-

ployees and at the same time load almost 15 per cent more cars than the government administration. In 1920, the last year of government operation, the total number of employees rose to 1,999,000 as compared with 1,783,000 in 1925."

COMPETITION has, of course, played its part in stimulating better employee and public relationships among the railroads. Motor bus and more lately airplane transportation have served as a stimulus to the railroads to go after passenger business more briskly than ever. I have noted a distinct improvement, for example, in the service between Boston and New York during the past year. Not only are the same trains run on faster schedules, but more trains are added to accommodate the convenience of the traveling public and particularly of the business man. This is all as it should be and the railroads are reaping the logical benefits from their enterprise.

ONE of the best channels through which the railroads' public relationships are served is contained in the activities of the United States Railroad Mediation Board appointed under the provisions of the Watson-Parker law.

It is the function of this Board to serve as a mediating influence in all disputes and questions involving labor relationships which arise between the management of the various roads and the Brotherhoods. This Board has now been in existence more than three years and in that time there have been no railroad strikes, which in itself is the best assurance the public can have of not only the Board's efficacy but also of the growing har-

The Effect of Motor Bus and Airplane Competition on the Railroads

"COMPETITION has, of course, played its part in stimulating better employee and public relationships among the railroads. Motor bus and more lately airplane transportation have served as a stimulus to the railroads to go after passenger business more briskly than ever. . . . This is all as it should be and the railroads are reaping the logical benefits from their enterprise."

mony between the railroads and their employees.

I have always believed that, in the final analysis, labor controversies must be solved by the direct parties to them. I have pointed out to clients for years the principle that when men get together and put their feet under the same table, they have traveled the best part of the road to mutual understanding. Decisions forced upon either employer or employee by external tribunals will never be of the same fundamental value as mutual agreements voluntarily arrived at. Questions affecting economic relationships in industry can never be placed on the same footing or judged in the same manner as ordinary legal controversies. Consequently, while I pay tribute to the service which the United States Mediation is rendering, yet I believe that its success is primarily due to the marvelous spirit of co-operation now existing between the railroad managements, the workers, and the public.

A CONNECTING link in this developing policy of labor peace among the railroads is the remarkable success which has met the so-called "B.

& O. Plan" by which systematic co-operation between management and labor has been made possible.

This plan started several years ago in an experimental way in the Glenwood shops of the Baltimore & Ohio Railroad. After being in operation a year, it received the endorsement of the American Federation of Labor and 22,000 shopmen were brought within the operation of the plan. The Canadian National Railways, acting jointly with the unions, also established the plan throughout its system with a result that today more than 50,000 railroad shopmen are co-operating, through their unions, with railroad managements to improve service and eliminate waste.

THIS program has as one of its constituent factors the compensation to labor of increased rewards commensurate with increased efficiency and production. This proposition is consistent with the new wage policy of the American Federation of Labor. It is proving a difficult problem to find some measuring stick by which the gains secured by co-operation between management and labor may be specifically identified

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and fairly divided. Joint committees, however, assisted by technical experts, are now engaged in formulating a method for determining these gains. The chief asset in working out a successful solution of this phase of the problem lies in the generous spirit of understanding and co-operation which exists between the unions and the railroad managements.

DURING the years in which the "B. and O. Plan" has been in operation its objectives have resolved themselves from an originally somewhat general program to a very specific array of propositions. The chief points in this program today are as follows:

- Stabilizing employment.
- Increasing output.
- Improving quality of workmanship.
- Better working conditions including sanitation, lighting, and safety.
- Conservation of material.
- Reduction in the number of grievances.
- Increase in the sense of responsibility by employees for the success of the railroad.
- Increase in the sense of responsibility by the managements for the welfare of the workers.
- Improved methods of employee training.
- Financial participation by workers in gains due to increased efficiency.

TANGIBLE gains have been made toward all of these objectives. It is interesting to observe that in the negotiations, generalities and merely sentimental exchanges of good feeling are absent. The proceedings and accomplishments are on a strictly brass tacks basis of practicability.

For example:

Grievances have been more than cut in half. More than 20,000 suggestions looking toward either increased efficiency on the part of the workers or welfare plans affecting them have been initiated by both men and management and considered by the joint co-operative conferences. Of these more than 16,000 are now in effect.

With the Parker-Watson law on the one hand and the growth of trade union co-operation in railroad management on the other, some believe that strikes may be a thing of the past in the railroad industry. In any case, labor troubles on the railroads have been reduced in potentiality to the lowest point in the history of this industry, although this doubtless has largely been brought about because so many employees are advanced in age. They both know that it would be impossible for them to get employment elsewhere. Moreover, they have lost their pep and fight which they had when younger. Industrial troubles are the greatest single waste in our production machinery today. The cost of strikes is an enormous burden and one which is shared equally by stockholders, management, workers, and the public.

The railroads today may be leading the way among our key industries in eliminating this greatest of economic wastes.

I HAVE described the "B. & O. Plan" at this length because I believe it has had an intangible but very genuine effect in increasing the service which railroad workers render to the traveling public. In other words, one of the most direct benefits from for-

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ward-looking, peaceful relationships between management and worker in a public utility such as a railroad is contained in the fact that the employees come into direct contact with the public in many instances. If all is serene and well within the family, then it is certain that every impetus will be given toward increasingly favorable relationships with the public outside the family.

I believe that the public should be constantly kept informed of the community service which the railroads are rendering night and day. It should be realized that public utility service is worth much more than it costs to the great majority of customers. Few of us stop to think of the dependability and convenience which characterizes our rail service. I know that a certain train will leave Boston for New York at a certain hour, regardless of whether there are enough passengers on board to make the trip profitable, or not. I can depend on this fact and my fare is fixed by government regulation and not by any fluctuating market of supply and demand. Railroads are taking vigorous steps these days to make their service more attractive through the same sort of merchandising methods which are common in other businesses, but which have not previously been used by railroads. This is necessary in

order to meet the competition furnished by other newer methods of transportation.

I BELIEVE that the railroads have the confidence of the general public today to a degree that was never known before. I further believe that the railroads have a tremendous future ahead of them and that they will co-ordinate their efforts with other and newer methods of transportation as they come into existence during the years ahead.

A continuation and further development of the mutual understanding and sympathetic co-operation between the management and the workers, and the workers and the public, is, however, necessary. On the other hand, let us remember that "pride goeth before destruction" and that the law of action and reaction is still in operation. Although labor conditions are gradually getting better, yet the world will always be faced with struggles between those who have and those who have not. Any other condition would not be healthy.

Therefore, I do not believe that even the railroads are free from labor troubles; but that we will some day again have a wave of labor disturbances. Hence, both relations with the employees and the public must still be most carefully watched.

"No Parking"

—BY ORDER OF JULIUS CAESAR

TO Julius Caesar is now credited the first "no parking" rule. He issued an edict forbidding vehicles to enter Rome during business hours because he saw that parking of chariots and other vehicles of that era tended to injure business in Rome. Similar regulations were put into effect in other large Roman cities.




JUNE

*Reminders of
Coming Events*

ALMANACK

*Notable Events
and Anniversaries*

12	T ^h	Mechanical propulsion of street cars was first attempted in Connecticut by HENRY BUSHNELL, who used a compressed air motor, 1878.
13	F	The Railroad Commission of Florida was abolished thirty-nine years ago today, 1891; but it was re-created May 8, 1897.
14	S ^a	The first telephone exchange in Iowa was opened at Dubuque, 1879; the first exchange in Oklahoma was opened at Oklahoma City, 1893.
15	S	BENJAMIN FRANKLIN made his first successful experiment in "drawing lightning from the clouds," thus paving the way for the electric light and power industry, 1752.
16	M	¶ <i>Leaders of the electric light and power utility companies will meet in San Francisco today at the opening of the annual N. E. L. A. Convention, 1930.</i>
17	T ^u	JOHN STEVENS, American engineer, prophesied that a network of steam-carriage roads would some day unite this country "in bonds of indissoluble union," 1812.
18	W	The New York Central Lines announced its first successful tests of directing its railroad trains by radio signals, in its freight yards, 1926.
19	T ^h	Citizens of Philadelphia blocked the introduction of street gas lighting on the ground that it would incline people to remain outdoors and catch colds, 1830. 
20	F	The <i>Savannah</i> , the pioneer steam-propelled vessel to cross the Atlantic, was greeted upon her arrival in Liverpool, England, 1819.
21	S ^a	A Grand Jury in a city in New York state voted rail highways a "public nuisance" and ordered them removed from the city limits circa, 1826.
22	S	Enraged tavern keepers, teamsters, turnpike men, and their friends in northern New York tore up the tracks of railroads that diverted business from their doors, 1846.
23	M	¶ <i>Captains of the street railway industry will foregather today at the opening of the A. E. R. A. Convention in San Francisco, 1930.</i>
24	T ^u	An Act was approved by the U. S. Government, requiring radio equipment to be installed on certain passenger company vessels, and competent operators, 1910.
25	W	ALEXANDER G. BELL demonstrated before the judges at the Centennial Exposition at Philadelphia his device "for transmitting speech over a wire," 1876.

*"God hath made man upright; but they have
sought out many inventions."*

—ECCLESIASTES VII; 29.



What Makes Magnates?

WHAT is the motive that impels a utility executive to keep on working to extend the size and service of his company, to increase its efficiency? Is it merely a lust for gain? Or is it—? But read Mr. Crowell's answer for yourself.

BY CHESTER T. CROWELL

RECENTLY I have had occasion to examine a large number of the technical reports of special committees of the National Electric Light Association. These reports deal with all sorts of problems from the design and efficiency of fireboxes to the lubrication of left-handed monkey wrenches. That they are now having, and for many years have had, a profound effect upon the steadily increasing efficiency of public utilities plants and equipment is a fact that need not be repeated.

What interests me is the reason for the effectiveness of these special reports in stimulating improvement.

To my mind they bear upon an intensely interesting abstract question. That question is:

Why do men work after their primary needs are satisfied?

When we are fed and clothed and have a margin of two weeks between

us and the wolf, why don't we spend the two weeks fishing?

The answer to these questions is of fundamental importance. If we can be sure of the reason why we go on working when we do not feel the sharp prod of immediate necessity we arm ourselves with the means for stimulating mankind to greater effort.

I HAVE long been convinced that the desire to excel and the great joy that comes of the full use of our powers, whatever they may be, are the real motives behind constructive work. I repudiate the age-old theory that the hope of gain is the dominant motive. In a civilization that has progressed as far as ours, especially along material lines, the danger of starvation is extremely slight. The hope of gain, it seems to me, is closely related as a motive to the fear of starvation. These reports of the

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special committees of the National Electric Light Association are outstanding examples of a form of stimulation toward greater efficiency and better work that is destined to be a more and more important factor in the industrial life of this country.

TODAY our industrial activities rest upon applied science far more than upon the possession of raw materials. The electrical public utilities are for the most part monopolies, each in its local field. They compete not against each other but against other industries.

For example:

A man may buy his electric light from only one company in one community, but if he intends to use a few hundreds or thousands of globes for advertising purposes in a sign, the whole advertising world is ready to offer other facilities besides electric light. If he wishes to cook with electricity he will probably find only one company from which to buy it. But he doesn't have to cook with electricity. There are numerous other fuels available.

That is the sort of competition toward which we tend nowadays and it behooves every industry to raise its standards of efficiency by the exchange of technical information.

HOWEVER, aside from the stimulation of this new and interesting form of competition, I come back to the proposition that a group of men operating an electrical central power station will be far happier in their work if they know that theirs is one of the best power stations in the country. And regardless of the dividends their company earns they will be less

happy in the enjoyment of them if the special reports of the National Electric Light Association assail them with the accusation that theirs is a poorly equipped or poorly managed or badly co-ordinated plant.

Happily we have a boyish pride in these things. They stir our childish vanity. I use the adjective childish not as a synonym for silly but as a synonym for inherent and wholesome. We *should* be vain about the things we can do. When a little boy runs he would like to run very fast; if possible, faster than any other little boy he knows. If he owns and operates a steam turbine and an electric generator he should eagerly desire to produce and sell a kilowatt hour of energy profitably for less money than any other group of men on earth similarly engaged. And what is far more to the point, I think that this is the motive that now inspires progress in the electrical field. Otherwise I do not see how or why the special reports of committees of technical men would prove as effective as they unquestionably are.

YOU will have seen by this time why I consider that the abstract problem, "Why do men work?" has a tremendous fundamental importance. In the development of the future, if it continues along the lines at present followed, we are going to have less and less competition between makers and merchandisers of the same articles.

For example, the question before me as a purchaser will not be whether I am going to buy cedar shingles from Smith or Jones. Both Smith and Jones will have almost precisely the

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same kind of shingles and if their industry is properly organized they will both have about the best cedar shingles that can be produced. Moreover their prices will be just about the same. Therefore, the question before me as a purchaser will be whether I am going to use cedar shingles, asbestos shingles, metal or slate, or one of the numerous compositions now on the market. Followed to its logical conclusion this means that whole industries will rise and fall together. Instead of being greatly concerned as to whether I shall buy bricks from Smith or Jones, I shall be seeking advice of experts as to whether I should buy bricks at all. If a sufficient number of men determine against bricks then bricks will cease to be made.

IT seems to me that the entire electrical industry may justly feel very proud of the fact that it has blazed a trail in co-operative effort through these special reports of the National Electric Light Association. At the time that work was undertaken scarcely anything of the sort was being well done by any other organized industry. As a matter of fact very few industries were organized well enough for any sort of constructive effort. If they organized at all it was usually against some threat of danger and the moment that the threat receded the organization tended to disintegrate.

IF I were starting out today as a young man just out of school I

should carefully take stock of the *esprit de corps* of the industry with which I allied myself no less than the personalities and merits of the individual firm. I should seek an industry that was alive and growing and eager. I should look for the spirit of youth. If I found that an industry had special technical committees at work advancing the art and science upon which it depended I should consider it animated by the proper motives. If it did not show evidences of this co-operative desire to set new goals and climb toward them, I should consider it either moribund or not yet far enough emerged from its barbarous stage.

IN its infancy the electrical industry was selling its product at 20 to 25 cents a kilowatt hour. Today the average price for whole districts is between 2 and 3 cents a kilowatt hour and, for certain customers who use enormous quantities, I know of profitable contracts in which the price named is approximately one cent per kilowatt hour. This achievement is largely due to pressure from within.

Pride of achievement has counted for at least 70 per cent of this; I should award not more than 30 per cent to eagerness for profit.

Here is a page from the record of American business that we can exhibit with pride in comparison with the recorded achievement of the great men of The Past and nail to the masthead as our banner while we sail our ship forward into The Future.

WANTED—Uniform Aircraft Regulation

A call to the states to co-operate with the Federal Government in establishing control over this new public utility, by HON. CLARENCE M. YOUNG, Assistant Secretary of Commerce for Aeronautics—in the next issue of PUBLIC UTILITIES FORTNIGHTLY.

Why Ratepayers Complain to the Commissions

The Accounting Department as a Source of Trouble

A customer's attitude toward a utility company is largely determined by his understanding of the rates charged to him. It is a part of the company's job not only to charge fair rates, but to explain the charges to the man who pays the bill.

By C. W. McDONNELL

PRESIDENT, BOARD OF RAILROAD COMMISSIONERS, NORTH DAKOTA

THERE is increasing evidence that public utility officials are realizing that the maintenance of good public relations constitutes one of the most valuable, if not, indeed, the most valuable, single asset of a utility corporation. This even is more true in the case of gas companies and electric companies than of the railroad or the telephone companies because there is obviously greater possibilities of increased revenues through good public relations on the part of the gas and electric companies than of the other utility enterprises.

Why is it that some utilities stand in high favor in their communities while others are under a constant pressure of criticism? Why does the Man on the Street in one town point with pride to the local electric power company, to the gas company, or to the street railway company—while in the neighboring town he is in constant conflict with the local utilities?

The answers, of course, vary greatly. In some cases, the local utility companies have become unwitting vic-

tims of politics; in some cases, they suffer from other circumstances not of their own choosing. But in many instances, the utilities have it within their own means to establish and maintain friendly relations with their customers, as has been repeatedly and conspicuously illustrated. And it is with preventable troubles that this article deals.

ONE of the chief causes of trouble between a utility and the customer lies in the failure of the company to explain the reasons for such of its actions that cause misunderstandings.

The customer demands a fair deal. The utility must do more than merely give it to him; it must let the customer know that he is getting it. It is a part of the service of a utility company to let him know it. If it does not, the company is falling down on its public relations job.

The Man on the Street is fair minded. He is willing to pay the prescribed rate for utility service. His attitude toward the company is

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determined largely by his understanding of the utility rates, rules, and practices. When he is charged with a rate that he does not comprehend, and which he consequently regards as unfair, he becomes critical.

At this point the public relations man steps in. At least, he *should* step in.

FOR purposes of illustration, let us consider the activities of the accounting department—where so many complaints from customers originate.

Probably the majority of consumers do not understand that meter reading is continuous, but believe that it starts at zero each month.

For example, take the case of the customer whose average consumption is around 30 kilowatt hours a month. Now, there is usually a considerable increase in consumption in October over September, and the meter is over-read 10 kilowatt hours. The customer complains and the November reading is 10 kilowatt hours *under* the correct figure.

The customer naturally believes that his complaint has been effective. Then when the increased consumption for December and the correct reading comes around, the bill is out of line with the previous month, and the customer is convinced that he is being cheated.

Such cases are common.

Let's consider another example. For some reason a new consumer's meter was not read for three months, December until April let us say, and the customer was billed at minimum of \$2 a month. Finally when his meter was read, the bill amounted to \$12 or \$15. This was paid under

protest; the customer claimed that with longer days and no unusual consumption there was no reason for any increase. Yet no explanation was forthcoming from the company beyond the stereotyped statement:

"We have carefully checked your bill for April and find it to be correct."

Then the May bill for \$3.50 came along—and right then the public relations with that consumer were represented by the minus sign.

True, after much correspondence the matter was straightened out, but there is still an antagonistic feeling on the part of the customer toward the utility. "Minimum billing," under such circumstances, is a fruitful cause of complaint.

ANOTHER instance: A customer agreed to pay part of costs of an extension necessary to serve him. There was a dispute as to whether or not the full amount had been paid, so the utility began adding a few dollars to the monthly bill without explanation; when the customer complained and held up payment, the company threatened discontinuance of service unless the bill was settled at once.

IN another instance a certain electric company put into effect a revised rate schedule. This schedule was of the "promotional" type calculated to stimulate consumption and the utility promised a reduction in the bills of a majority of the consumers.

Now there were a few customers who had been using very little current for lighting but a great deal for cooking at a special reduced "cooking rate." This arrangement, of course,

Causes for Complaints Should Be Removed
by the Utilities—Not by the Commissions

"REGULATORY bodies came into existence largely because the utilities were unable or unwilling to maintain good public relations. . . . The manager of one division of a large utility stated that he attempted to settle no complaints of his patrons; he just 'passed them along to the Commission.' We are thus burdened with an immense amount of work which should never come to our attention at all. The utility should take care of such complaints."

called for two meters, one to register the energy consumption for cooking and another for the current used for other purposes.

With the coming of the new schedule, all domestic current was passed through a single meter or else measured by a combination reading of both meters at a composite rate which, while considerably lower than the old lighting rate, was slightly higher than the old cooking rate. As a result, while a majority of the consumers benefited by the change, this small group of consumers which had used current almost exclusively for cooking actually suffered an increase.

Now the company had advertised that these customers might, if they wished, take advantage of the new rates for lighting only and would be billed at the old rate for current used for cooking. This arrangement would have caused a considerable reduction of rates in the cases mentioned. Nevertheless when the monthly bills came along, they were rendered on the basis of the new schedule. Naturally enough the customers protested against the increase. They were per-

functorily advised that the bills were "correctly figured"—which was true enough as far as pure accountancy was concerned.

When complaint was made to the Commission, however, the company explained for the first time, that if the customers would call at the office an adjustment would be made and that future billing would be estimated on the basis that would give the lowest rates. But, unless they made this trip to the office, no adjustment would be made. It is not surprising that many consumers were convinced that the company was merely joking when it promised reduced rates.

Many similar examples might be cited in which antagonisms were engendered toward the utility because of the company's failure to give a full and complete explanation of the application of the schedule of rates.

INSTALLATIONS of appliances, especially those which involve heating elements, frequently cause what appears to the consumer to be unwarranted increases in his bills.

Consumers do not realize that a

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flat iron uses as much "juice" as a dozen 50 watt lights, or that a large waffle iron uses as much as four to six washing machines. Salesmen should be very careful not to misstate the probable increase in electric bills by the use of such appliances. Now and then a sale may be lost by such a policy, but it will pay in the long run. Cashiers and meter readers, who come in personal contacts with customers, should be able and willing to explain any increase in bill caused by installation of any appliance.

PROBABLY only a small proportion of dissatisfied customers complain to the Commission of any irregularity, fancied or real, on the part of the utility. But a disgruntled customer may be depended upon to tell his neighbors; then when some of these neighbors find something out of line in their electric bills, they remember what they heard, and are convinced the company will bear watching. This sentiment may crystallize into hostile legislation. Regulatory bodies came into existence largely because the utilities were unable or unwilling to maintain good public relations. No legislature or Congress will enact any legislation unless it believes there is a necessity for it.

FREQUENTLY utility men, when some rule, rate, or regulation is called into question, will play the "old army game" and reply, "Oh, that is a rule of the Utility Commission," or "We would be glad to change the rule but the Commission will not permit it."

This has happened in many instances when the Commission has

suggested to the utility the very change proposed by the consumer. This is a short-sighted policy, and after the facts become known (as they usually do), the utility is the loser.

The manager of one division of a large utility stated that he attempted to settle no complaints of his patrons; he just "passed them along to the Commission." We are thus burdened with an immense amount of work which should never come to our attention at all. The utility should take care of such complaints. We know it can be done for it is being done. In this state there is an electric company which serves over 50,000 people, and from whose territory not a single service complaint has been received in this office for the past three years!

MANY men with wonderful records in the construction and operation of public utility plants are incapable of maintaining good relations with the public because of their training as engineers. This observation is not intended as a criticism of the engineering profession—far from it. When we consider a great bridge designed by engineers and built in Pittsburgh and erected in Central Africa, on foundations built by other engineers, and realize that every part must fit to the fraction of an inch; when we think of the Cascade tunnel, driven from opposite sides of the mountain and meeting in the center within a few inches, our hats are off to the engineer. But engineering is an exact science. The engineer deals with inanimate objects. Measurements must be exact or the whole

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structure will fall. Engineering *formulae* applied to engineering problems will bring the same results every time.

But human nature cannot be measured with a slide rule. Public relations cannot be lined up with a transit. Much of the training that fits a man for the profession of engineering is a handicap in handling public opinion. This does not mean that no engineer can become a good public relations man; occasionally we find one who is. The company which employs that rare man in a responsible position is to be congratulated.

WE are all more or less inclined to "hero worship," and like to believe that a man who has been conspicuously successful in a particular line of work is an authority on any question on which he may see fit to express an opinion. (For example, look at the source of much advice given the farmer these days.) But there is no more reason for assuming that a successful engineer or accountant would be a good public relations

man than there is for thinking that a good relations man must of necessity be a good engineer.

When it is generally recognized that a public relations man requires as much training and even more experience than an engineer or accountant; when, in dealing with the public, the slide rule is discarded in favor of the Golden Rule, then a brighter day will dawn for the public utilities—and for the public.

The utility must do more than merely give a fair deal to the customer; it must let the customer know that he is getting it. It is a part of the service of a utility company to let him know it. If it does not, the company is falling down on its public relations job. The Man on the Street is fair minded. He is willing to pay the prescribed rate for utility service. His attitude toward the company is determined largely by his understanding of the utility rates, rules and practices. When he is charged with a rate that he does not comprehend, and which he consequently regards as unfair, he becomes critical.

A Glance Ahead Into the Gas Utilities

"IT is probable that all of the long pipe lines for natural gas will be completed within the next thirty months. Likely there will be no further construction of such lines at any time in the future. Such long-distance carriers of gas as will be built in the years thereafter will doubtless carry manufactured gas produced in huge central stations located conveniently near the sources of coal supply. Even the present natural gas lines later on will be used for the transport of manufactured gas."

—FLOYD W. PARSONS

Remarkable Remarks

E. PENDLETON HERRING
Author and publicist.

"The time is not far distant when Congress will have to face squarely the question of regulating the lobby."

CHARLES GORDON
*Managing Director, American
Electric Railway Association.*

"The number of (street car) riders each day is approximately equal to the entire population of the city."

EDWIN C. BROOME
*Superintendent of Schools,
Philadelphia.*

"No major undertaking is carried on without the use of propaganda."

EVERETT DEAN MARTIN
Sociologist and ex-pastor.

"It (propaganda) is never distinterested information. The propagandist has an ulterior purpose."

EDWARD L. BERNAYS
Public relations counsel.

"Propaganda tends to keep open an arena in public life in which the battle of truth may be fairly fought."

GEORGE ROTHWELL BROWN
Newspaper columnist.

"Mr. Ernest H. Cherrington explains it all—a lobbyist is a wicked person who favors something you are against."

WALDEMAR KAEMPFERT
Scientist.

"Probably as early as the year 2500 . . . the last lump of coal in the form of coke will be flung into the furnace."

ED HOWE
Newspaperman and philosopher.

"If we turn over business to big corporations, and they are managed by such men as Borah, the LaFollette boy, Brookhart or Norris, I say again God help us."

JOSEPH P. GROCE
*Of the Edison Electric Illuminat-
ing Company of Boston.*

"The only legitimate reason for a public utility to run a broadcasting station is for the purpose of bettering its public relations."

CARTER GLASS
*U. S. Senator from Virginia
(referring to dial telephones).*

"Senators are required to perform the duties of telephone operators in order to enjoy the benefits of telephone service."

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T. J. SMITH
*Editor, "So The People
May Know."*

"Congress should see that the independent appliance merchant is safeguarded by enacting legislation forcing utilities out of appliance merchandising."

*An editorial writer in the
"Atchison Globe."*

"Wives leave home . . . because their homes are so well equipped with electrical housekeeping devices they have nothing to do at home, and idleness drives them into the business world."

JOSEPH S. FRELINGHUYSEN
*Former U. S. Senator from
New Jersey.*

"There is now in process of development a gigantic power combination or trust which aims to set up a monopoly of the power and light business of the country."

BERNARD J. MULLANEY
*President, American Gas
Association.*

"The popular conception of what 'monopoly' means naturally tends to prejudice attitude toward a merger as implying an extension and tightening of monopolistic 'oppression.'"

ERNEST H. CHERRINGTON
Anti-Saloon League official.

"Until supermen and superwomen are chosen to legislative bodies, citizens, either as individuals or else grouped in associations of the like-minded, will feel justified in presenting their attitude toward proposed legislation."

THOMAS N. McCARTER
*President, Public Service of
New Jersey.*

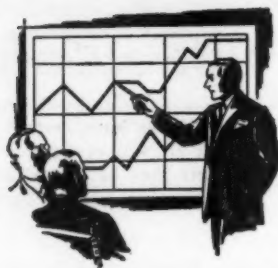
"A few hours ago a lady in Montclair called me up and told me that everything was wrong in her home. I asked her what the trouble was, and she said the lights wouldn't burn; that the radio was frosted and that the refrigerator was singing. She told me I should come myself or send someone else at once."

HARPER LEECH
Economist and editor.

"While electric power cannot make a feeble wit into a genius, cannot make short men tall nor even emulate Colonel Colt's feat in making 'all men the same size for combat purposes,' it does tend to give men equal chances to make a living regardless of where they live, and also makes it possible for them to live well in more places."

CHARLES A. EATON
U. S. Senator from New Jersey.

"We have had an investigation by that most impartial body, the Federal Trade Commission, and for a year and a half they have been dragging out of the closets of the utility business every skeleton that has ever been laid away in grave clothes, and giving that to the public, and when the other side presents anything to them, they would not put it in the record for fear the dear public would be contaminated."



LET CONGRESS

Fix the Utility Rate Base

A Direct Method of Circumventing the
"Dred Scott Decision of Utility Regulation"

IN 1898 the Supreme Court of the United States laid down the rule that the property of utilities should be valued, for rate-making purposes, at its present fair value. But instead of settling the matter once and for all, this decision, (which Father Ryan calls the "Dred Scott decision of public utility regulation,") has continued to be the subject of persistent attack and stubborn defense. Meantime, the highest court has confirmed its original ruling with many subsequent decisions. Father Ryan is one of the leaders of the school who believes that this policy is the chief source of our regulatory problems. Numerous other attempts to get around it have failed to pass legal muster. The author of this article, who combines his social ideals with legal shrewdness, now proposes to cut the Gordian knot with congressional action.

By JOHN A. RYAN

ON January 24th of the present year, the Interstate Commerce Commission addressed a letter to Congress suggesting the enactment of "a modified method" of valuation for the railroads.

According to this method, the value of any railroad property would be determined at any time by adding to the cost of reproduction in 1914 subsequent increases in the value of the land plus the actual cost of subsequent additions to the property.

THIS suggestion of the Interstate Commerce Commission arises out of two facts—one general, the other particular.

The general relevant fact is that the Supreme Court has never declared how much weight should be accorded to reproduction cost when this exceeds original cost. In the Southwestern Bell Telephone Case, the court fixed a valuation which exceeded the original cost by 25 per cent. In *McCardle v. Indianapolis Water Company*, the valuation allowed by the court was approximately 80 per cent above original cost.

In the *O'Fallon* Case the court declared that the Commission should have given consideration to reproduction cost, but failed to specify "the weight to be accorded thereto."

Having hemmed and hawed since

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1898, it is now quite obvious that we need never expect any definite action from the Federal judiciary. In the absence of positive legislation, the long train of non-committal decisions culminating in the recent Baltimore Fare Case shows quite plainly that the uncertainty attending the present method of ascertaining the value of public utility property for rate-making purposes will probably go on indefinitely as long as we leave the final determination of the matter with the Supreme Court.

THIS refusal of the court in the O'Fallon Case to specify the exact weight to be given to reproduction cost value is the particular fact which gave rise to the letter addressed to Congress by the Interstate Commerce Commission. The Commission's valuation of the O'Fallon railroad was set aside because it "gave no consideration to increase in prices since 1914," but the Commission was not informed how large the consideration should have been in order to satisfy the court.

In its present situation the Commission does not know what percentage of addition on account of increased costs since 1914 will be sufficient to prevent the court from again setting aside its valuation of the O'Fallon property. Since the court has studiously refused to lay down a general rule on this point, the Commission properly appeals to Congress.

Now, what the Interstate Commerce Commission tried to do in the O'Fallon Case, and what it proposes to have Congress do, is, in effect, practically the same as many economists favoring the so-called "prudent

investment" doctrine have been advocating for a long time. I say "practically" because the Commission would have the value of railroads determined by using the reproduction cost as of 1914 as a starting point and adding the cost of subsequent additions. The fact of the matter is that there was not a great difference between "prudent investment cost" and "reproduction cost" in 1914. Prices of raw materials did not skyrocket until the World War came upon us.

There is no reason, therefore, for prudent investment theorists to object to the 1914 basis of the Commission's valuation plan simply because it happens to be labeled "reproduction cost value." Such a plan would unquestionably go a long way towards stabilizing the rate bases of these great transportation agencies and would undoubtedly affect regulatory policies for public utilities generally.

BUT why did the highest court refuse to approve of such a plan when it was presented for its approval in the O'Fallon Case?

The reason given by the Supreme Court for modifying the findings of the Commission in the O'Fallon Case was that the Commission had disregarded Paragraph Four, Section 15a of the Interstate Commerce Act, which requires "due consideration to all the elements of value recognized by the law of the land for rate-making purposes," "The law of the land" is not expressed in any congressional statute. It is found in the decisions of the Supreme Court. Hence the fundamental reason why the court set aside the valuation of the

The "Modified Method" for the Valuation of Utilities

“UNDER this modified method which we now suggest, up-to-date valuations at any time would be determined by taking the cost of reproduction new at the 1914 unit prices of the property existing on the original valuation date, plus the then value of the lands, adding or subtracting the subsequent net increase or decrease in the property investment account as shown by the accounts when correctly kept, adding further a proper allowance for working capital and deducting the balance standing in the depreciation reserve.”

—COMMISSIONER JOSEPH B. EASTMAN
OF THE INTERSTATE COMMERCE COMMISSION

O'Fallon property made by the Interstate Commerce Commission was that its own rules and decisions had been disregarded by the Commission.

In effect, therefore, the letter of the Commission asked Congress to modify and in part annul the court's definition of fair value. Now, there is no doubt that *Smyth v. Ames* is the big stumbling block towards stabilizing the rate base by legislative act.

One might say it is the *Dred Scott* decision of public utility regulation.

Had Congress fixed the rules of valuation before the decision in the case of *Smyth v. Ames*, its action would probably have been sanctioned by the Supreme Court; but *Smyth v. Ames* was decided in 1898 and has been followed by a considerable number of decisions which gave specific recognition to cost of reproduction.

ONE of the most peculiar things about this case of *Smyth v. Ames* was the fact that the so-called

present value was urged by the champions of the ratepayers as opposed to the "capitalization value" asked for by the railroads. Theoretically capitalization value should be about the same as original cost, but the late William Jennings Bryan, who appeared against the railroads, charged that such a capitalization might be considerably watered and so the highest court was constrained, at the insistence of this advocate of the people to decree that present or "real" value should receive consideration for rate-making purposes.

IT is a matter of history that the sharp rise in construction costs during the World War brought a corresponding right-about face in the alignment of partisan interests with regard to reproduction cost as a measure for rate valuation. But I comment on this fact parenthetically because it seems to me that what was originally intended by the highest court as a restriction on the composi-

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tion of utility rate bases has, by virtue of war-time economic fluctuation become a boomerang to the ratepayer. I wonder if the literal and consistent reaffirmance of this doctrine by the highest court in later years has been in strict conformity with the intention of the justices that occupied the bench in 1898, not one of whom survives today.

Regardless of such a speculation, however, the fact remains that the Supreme Court once having taken the "present value" stand has hewn to the line. Now, in the face of this history, would the court now uphold a congressional statute which disregarded reproduction cost except in the matter of land?

A DEFINITE answer to this question cannot be had except through congressional action. The Supreme Court might refrain from setting aside a law which gave to reproduction cost only that weight which arises out of increased values of land. At any rate, the experiment is well worth making.

Should the Supreme Court fail to sustain the valuation law which the Commission requests, Congress might then pass a statute fixing the definite maximum weight to be accorded in valuation cases to the present cost of reproduction of the artificial property of the railroads. The maximum might be placed at 10, or 20, or even 25 per cent. By specifying a maximum rather than a rigid figure, the law would allow the Commission some latitude for making lower allowances in cases where economic conditions, such as competition, rendered impracticable a higher valuation. The

important thing, the necessary thing, is that the Commission should have some definite guidance with regard to reproduction cost.

In connection with the letter sent by the Commission to Congress, a dissenting statement was made by Commissioner Woodlock. "Value for rate-making purposes," he says, "is a fact to be found by a judicial process and not a relation to be fixed by a process of legislation."

THIS is a curious fallacy. Economic value is indeed a fact which can be judicially ascertained but "value for rate-making purposes" is not economic value; it is "fair value," and this is not an economic fact but an ethical judgment. No amount of economic evidence will suffice to answer the question whether reproduction cost ought or ought not to enter into the valuation of railroads. No amount of judicial consideration can decide this question without bringing in the ethical notions of the judges. Now the ethical opinions and judgments of Congress may be quite as closely in accord with objective ethical truth as those of the Supreme Court. Contrary to Commissioner Woodlock's view, fair value is "a relation" and not "a fact," *i. e.*, an economic fact.

COMMISSIONER Woodlock declares further that the law of the land governing the valuation of public utility property "rests upon a constitutional and not upon a legislative foundation, . . ."

The constitutional basis for the "law of the land" which recognizes present reproduction cost is rather remote. The Constitution does, indeed,

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prohibit confiscation of property and this prohibition has been interpreted by the Supreme Court as forbidding the public authorities to fix rates which will give less than a fair return on a fair valuation.

Fair valuation has in turn been interpreted by the court to include a greater or less allowance for present cost of reproduction. The last mentioned provision has, therefore, been judicially read into the Constitution. If a majority of the Supreme Court, during the last ten years, had held the views on valuation entertained by Justices Holmes, Brandeis, and Stone, a different construction would have been judicially put upon the "due process" clause as regards property. In that case, the Constitution and the

"law of the land" would have given no recognition to present reproduction costs of artificial property.

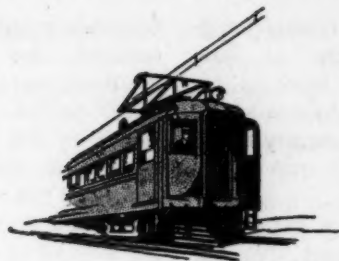
CONSEQUENTLY, there is nothing in the Constitution to prevent Congress from determining the rules of valuation and from defining confiscation as regards the financial returns on public utilities. The real obstacle exists in certain decisions of the Supreme Court. How far these can be "circumvented" by Congressional action as suggested in the letter of the Interstate Commerce Commission can be definitely known only through a favorable response to the suggestion and the subsequent fate of the enactment before the United States Supreme Court.

"Regulation by Intimidation"

DURING the past two or three years, the political attacks upon the utilities have found expression in so many investigating commissions, so many proposed restrictive laws and so many other threatening measures that the industry as a whole has faced a period of uncertainty and doubt. These activities are not only retarding business development but are proving costly to the corporations and to the public alike—to the ratepayer, to the stockholder, and to the taxpayer.

WHO is responsible for this period of "regulation by intimidation?" Is it the politician? Or the ratepayer? Or are the utilities themselves to blame? Or are all three jointly responsible?

IN a coming issue of this magazine SAMUEL CROWTHER, the well-known writer and business analyst, who has surveyed the situation from the perspective of the Man on the Street, will give his views of present trends as he sees them. And in his article he raises several points that may well give the utilities food for thought.



THE FUTILITY OF COMMISSION

Regulation of Car Fares

THE "monopoly" privileges of the street railway companies have become mere fictions; the traction business is today a highly competitive enterprise, fighting for its existence against private automobiles, busses and taxis. Why, therefore, should not the question of rates be determined by the laws of economics?

By FRANCIS X. WELCH

"What is this bloody stuff, Oh maw,
"That looks like strawb'ry jam?"
"Hush, my child, it is yer paw
"Runned over by a tram."

Is the street railway industry running pell mell over the prostrate and helpless body of the American wage earner?

Are the traction barons, with pockets stuffed with franchises and commission certificates protecting their monopolies by law, engaged in exacting the last pound of flesh from the poor straphanger who has no choice but to patronize their service?

Do the American people need protection from exploitation by the greedy gougers that operate the rapid transit facilities in our respective communities?

The right answer to all these questions is "No!"

The street railway men know it is "No!" The business men of the

country know it is "No!"

And what is most important the straphangers know it is "No!"

THERE is not a street railway man in the country who does not know that the very existence of his business is dependent upon keeping the rate of fare below that point where the patrons will start walking or else buy an automobile—that indefinite stage known to the economists as "the point of diminishing return." There is not a smart business man in the country who does not know that the investors in street railway properties are getting a return on their money in many instances lower than that paid on first mortgages or government bonds. There is not a straphanger in the country, who has seriously thought about it, who does not know that the first move a street railway company, patronized by him,

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made towards anything remotely suggesting a sharp increase of fare, would cause him and most of his neighbors to throw up their straps in disgust and leave the company to die under the wheels of its own empty cars.

The long and short of the matter is that everybody knows that the street railway industry is engaged in a life-and-death struggle with automobile competition, and that constant vigilance in the direction of operating economies and minimum fares is the only way it can ever survive.

THE American people have as much to fear by way of excessive rate exploitation from street railway companies as an elephant has to fear from a mouse. Of course the elephant *does* fear the mouse, and its terror is just about as sensible. A street railway company today could not exploit anybody except its own shareholders by excessive fare increases. Its so-called "monopoly" is a myth. Every time the motor vehicle bureau issues a set of automobile tags (private or commercial) a new competitor has entered the field. Far from being a monopoly in practice, the traction business is one of the most highly competitive commercial enterprises in existence.

But how is the public acting towards this business which is passing through such a critical period of its existence? It is acting exactly as the elephant acts towards the mouse—with an unwarranted hysteria of fear and suspicion.

Notwithstanding the well-known facts about its sick condition, the street railway is subject to exactly

the same regulation as the electrical industry, the best protected and healthiest monopoly now functioning under private control. It is hamstrung by the same restrictions and thrown into the same legislative hopper as all the other utilities who are in the best of health. Instead of being allowed to work out its own destiny unhampered by governmental limitations or at least encouraged by judicious and sympathetic regulatory policies, it is viewed with the same scrutiny as the other utilities and burdened with even more popular disfavor.

JUST what may be the historical reason for this popular disfavor towards street car companies is a difficult question to answer. The fact remains that people are unaccountably mean towards them. A man who would employ a by-pass on his gas or electric meter is generally accounted as dishonest and no better than any other cheat or thief but the man who beats his way on a street car brags about it.

Why is this?

We probably would not associate with him if he told us he manufactured slugs to put in a telephone coin box but we laugh at him when he tells us how he "brushed right by" the conductor.

This popular disfavor—probably a relic of the old corporation baiting days when the transportation business really was a racket for Wall street financial jugglers—is not at all helpful to the sick industry. Citizens band together once in a while to attack a gas company or an electric company, but they seem ready, will-

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ing, and able at all times to jump on the car companies.

A SURVEY of the *Public Utilities Reports* for five years (1925 to 1930) shows 1,510 rate and service disputes decided by the courts and Commissions for all types of utilities, excluding the independent bus carriers and railroads. Of these, 453 cases involved street railway companies. Gas companies came next with 340 cases while telephone, water, and electric companies followed in the order named.

In other words, 30 per cent of the business reported to have been accomplished (in the regulating field of the five utilities mentioned) by the courts and Commissions involved street railway companies.

The fact is that the street railway business is the one that needs protection from the people or at least the political champions who claim to represent them. There were five instances of this in the last few years, instances where the ratepayers insisted on the uttermost farthings worth of legal remedy without regard to whether or not a fair return was being earned by the utility—in fact without regard to whether or not it was even making expenses. These cases all involved franchise contracts.

TAKE the New York Interborough Case for example. Nobody questioned the fact that the operators of the subway were not making a fair return. The Supreme Court's decision turned purely on the question of whether or not they were bound by a contractual obligation to operate for a 5-cent fare.

The same thing happened in Deca-

tur, Georgia, when the street railway company, finding itself unable to operate for 5 cents, offered to surrender its franchise. The offer was refused and when the company started to tear up the tracks, the court stopped it upon suit by the patrons.

"But we can't even pay expenses—we're losing money at the 5-cent fare!" said the company.

"That's too bad," said the court, "but you'll just have to go right on losing it. You've made a bad bargain; now you must keep it."

The same thing almost happened to the Los Angeles car company, only the court found in that case that the California Commission had already abrogated the 5-cent franchise contract. The same thing did happen in Columbus, South Carolina, last year. And we all remember what happened some years ago in Detroit when the street car company's franchise expired and the city, refusing to renew it, was able to buy the system for little more than what the junk man would pay for it.

The cases are cited here not for the purpose of questioning the validity or legality of the decisions. They were perfectly sound legally. Street car companies who make bad bargains through franchise contracts must abide by the consequences just like the rest of us. But the point is to establish that it is the straphangers and not the street railway companies who are always looking for the legal pound of flesh. To paraphrase the little verse that appears at the beginning of this article:

"What is this thing so meek and mild

"That looks so feeble, maw?"

"It is the street car business, child,

"A-scared stiff by yer paw."

The Economic Law Is the Actual Regulator
of Street Railway Rates

"THE regulation of street railway rates is an unnecessary and unwarranted interference with an industry engaged in the most critical struggle of its existence. . . . The law of competition—the age old statute of Supply and Demand—regulates the fares of street car companies far more effectively than any man made law; yes, better than all the courts and commissions in the land. It keeps fares at a level far lower than that allowed by the Constitution."

ON the other hand, let us see how hard the street railway companies are bearing down on the helpless straphanger.

It is a matter of judicial precedent that utilities are entitled to charge rates which will yield "a reasonable return on the fair value of their property." A "reasonable return"—in the absence of a contractual obligation such as a rate franchise—is somewhere between 7 per cent and 9 per cent. Federal courts have been holding fairly consistently that the action of a State Commission in fixing utility rates that will produce less than 7 per cent return, is a violation of property rights guaranteed by the Constitution.

The latest word on this is the following phrase of Justice Sutherland, giving the opinion of the Supreme Court of the United States in the recent Baltimore Street Railway Case:

"In the light of recent decisions of this court and other Federal decisions, it is not certain that rates securing a return of $7\frac{1}{2}$ per cent or even 8 per cent on the value of the property would not be necessary to avoid confiscation."

Now in this very case, which the

Maryland Commission fought so valiantly all the way up to the highest court, was the street railway asking for the pound of flesh? Let us read the very next sentence of Judge Sutherland's opinion:

"But this we need not decide, since the company itself sought from the Commission a rate which it appears would produce a return of about 7.44 per cent, at the same time insisting that such return fell short of being adequate."

FAR more significant that the particular rate asked for by the United Street Railways of Baltimore, however, is the statement made by Chairman Harold E. West of the Maryland Commission in the original opinion of the Commission. He said:

"The only comparable business undertakings attended by corresponding risks and uncertainties that this Commission knows of are those of other street railway companies in the East, and it does not know of such a company which is earning a return of much, if any, more than 6 per cent, no matter what the rate of fare."

Now Chairman West would not want to minimize the earnings of street railway companies in view of

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the rate order he handed down in that case. This writer believes his estimate about the 6 per cent return to be no exaggeration, in fact; he believes it is rather liberal.

Now, if the street railway companies in the eastern part of the United States are earning no more and in many cases much less than 6 per cent return on the same value upon which the Federal courts are willing to grant them the right to earn $7\frac{1}{2}$ and 8 per cent for the asking, the conclusion is inevitable that these utilities are not asking that to which they are legally entitled.

BUT why this modest forbearance on the part of the street railway companies? Does it proceed from a sheer generosity of the spirit?

It does not!

The truth must be confessed that this restraint is not due to altogether altruistic motives. The truth must be confessed that they do not ask for a reasonable return because they cannot get it.

Receiving the right to earn an 8 per cent return and earning it are two entirely different matters as any street railway operator will testify.

This leads to the further conclusion that the regulation of street railway rates is an unnecessary and unwarranted interference with an industry engaged in the most critical struggle of its existence. It is unnecessary because it does not and cannot affect rates. It is unwarranted because it is a fertile source of litigation that creates bad public relations for the street car companies and costs both the utilities and the taxpayers all the expenses incidental to regulation.

THE law of competition—the age old Statute of Supply and Demand—regulates the fares of street car companies far more effectively than any man made law; yes, better than all the courts and Commissions in the land. It keeps fares at a level far lower than that allowed by the Constitution. This writer denies that there is a single street car company operating in any city of over 25,000 population in the United States today actually earning a return equal to that which the Supreme Court has said is necessary “in order to avoid confiscation” (to wit; $7\frac{1}{2}$ to 8 per cent.) As one State Commissioner put it, “The Commission can regulate rates but it cannot regulate the law of economics.”

The Commissions admittedly recognize this inability of the street railway companies to earn what we shall call by the somewhat inaccurate name of the “legal rate.” In fact, some of them fix rates below this legal rate on the strength of the fact that the car company has reached the “point of diminishing return.”

In other words, they are attempting to regulate, not according to the laws of the land but according to the laws of economics.

ASSUME, for example, that a certain street railway company has reached the point of diminishing return where an increase in rates would do it more harm than good and decrease its past revenue by reason of declining patronage. What is to be done?

A utility cannot ordinarily just close shop and go through bankruptcy as a private business usually does un-

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der such circumstances. Utility service must go on if possible. It cannot suspend operations without Commission approval, and such approval is given reluctantly, only in cases where the utility, after exhausting every possible means of raising revenue, is positively losing money. As long as utilities can barely pay for their way they are asked to go on. Fortunately for all of us, they usually do go on.

In some states the Commissions have left the question of whether or not the point of diminishing return has been reached with the utility's management. The position justifying this policy is that the managers of a utility would be the first to know whether a rate increase would do it any good and the last to ask for it if it would do the utility more harm than good. As long as a utility can prove its inability to make a fair return under existing rates, such Commissions will grant rate increases as a matter of right. Whether the increase is economically ill-advised is left to the company's discretion.

In other states, however, the Commissions have a different policy. Transit service, they say, is so important to the public that its continuance should not be jeopardized by ill-advised although well meant rate experiments. Such has been the policy, for example, of the Maryland Commission.

IN the Baltimore Street Railway Case, when the company asked for a 10-cent fare, the Maryland Commission practically said this to the utility:

"If your business were in a good, healthy condition, no doubt you would be entitled to an 8 per cent return. But you cannot earn 8 per cent,

no matter what rates you charge. We have studied your business and find that the most you can make and still keep your remaining business intact is about 6.26 per cent. If we let you charge the 10-cent fare, you will ruin what is left of it by driving away those who still use the service, and if you once ruin it we may have to let you discontinue it. Therefore, we will not let you ruin it but instead we order you to modify your increase to produce about 6.26 per cent return."

Now, with all due respect to the unquestionable ability of the Maryland Commission which has such a long and distinguished record of public service, this writer contends that the operators of the Baltimore street railways know more about their own business than even the Commissioners. Making all due allowance for the sagacity of Chairman West, for instance, whose competency as a Public Service Commissioner no one would question, is it not logical to suppose that the managers of the street car companies are in a better position to know whether a fare increase would do them any good than Commissioner West?

And granting this advantage, would not these same managers be the last ones to ask for an increase that would drive their patronage away?

This writer believes the very statement of these questions suggests their correct answers.

WHY then regulate rates of street railway companies? Let us see what fares street railways are charging in the absence of State Commission regulation. If regulation is necessary and effective, the fare in un-

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regulated cities ought to be higher. If such fares are as low or lower than fares in cities subject to regulation, it would seem to indicate that state regulation is unwarranted.

The following cities have street railway systems which are not subject to rate regulation by the state. These cities have all entered into voluntary franchise agreements fixing their rates of fare. These fares, according to the *A. E. R. A. Bulletin* (No. 164) issued January 1, 1930, were:

Cleveland, Ohio	7 cents
Jackson, Miss.	7 cents
Miami, Fla.	7 cents
Louisville, Ky.	10 cents
Grand Rapids, Mich.	10 cents.

NEXT we come to Wilmington, Delaware, which is, as far as this writer can find out, the only city of its kind in the United States. Not only is the state without a regulatory commission but even the city public utility board has only limited jurisdiction in powers over rates. Outside of Wilmington, there is no regulation at all!

Now, here is a state that ought to be a paradise for the greedy traction barons. Free, practically, to do as it pleases, what is the rate charged inside and outside of Wilmington by the Delaware Electric Power Company? The *A. E. R. A. Bulletin* tells us it is 8 cents!

Of course, the average rate of fare from such a small group would

scarcely mean anything but here it is for what it is worth—the average fare for the six cities considered is 8.1 cents. Compare this with the average street car fare for the whole United States, which on December 31, 1929, according to the *A. E. R. A. Bulletin*, was 8.4258 cents, and then let us ask ourselves what good street railway fare regulation is doing.

THE writer admits that this little table of cities is sketchy and impressionistic. It is almost impossible to gather data on all cities not subject to state regulation, and at the same time ascertain whether or not the local municipal regulation was more dictatorial than a state board would have been.

For instance, Boloxi and Gulfport have a cash fare of 5 cents. Both are situated in Mississippi, whose Commission at this writing had no jurisdiction over street car fares. But the writer was unable to ascertain whether the rate was voluntarily placed into effect by the utility or compelled by local municipal regulation.

This much is certain, however; we cannot regulate economic forces by means of State Commissions. Regulation of those utilities such as telephone and electric companies whose monopolies may be successfully guarded by law, is unquestionably necessary. Regulation of them is



Q“IF street railways are regulated out of existence, the burden on the public will be staggering. . . . The suburbanite would just have to hike it or buy an automobile and add to the congestion of present-day vehicular traffic.”

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successful, effective, and necessary in order to prevent the public from monopolistic oppression on one hand, and the industry from the disastrous waste of duplicate facilities on the other. Furthermore, there is no doubt that regulation of street railways in the past was just as necessary and effective as regulation of telephone and electric rates.

BUT today things in the street railway business are different. The fact that a man can ride in Delaware for a cheaper fare than the average rate of all American cities having street railway rate regulation shows that somewhere something is holding down car fares far better than a Commission ever could. The fact that street car companies in the East are earning a return far less than a Commission could ever hold them to, proves it again.

That something somewhere is automobile competition.

The battle the street railways are making to adjust themselves is not only their own battle; it is the patrons' battle as well. There are large groups of people residing in the suburbs and more remote sections of our cities who just cannot do without cheap mass transportation. But their patronage alone is not enough to carry the service. The utility's problem is to fix a fare which will keep the most number of short-ride and off-peak patrons and at the same time yield the greatest revenue and still be consistent with good service.

If street railways are regulated out of existence (and they will be if such treatment as the Decatur, Georgia, and Columbus, South Carolina, be-

comes prevalent), the burden on the public will be staggering. Taxicabs, cut-rate or otherwise, are obviously incapable of taking care of the long haul offered by the street car at a comparable rate. The bus has not yet grown to the size of a self-supporting cheap medium for the general transportation system of any large city. The suburbanite would just have to hike it or buy an automobile and add to the congestion of present day vehicular traffic.

"BUT what harm does regulation do if it doesn't affect the street railways?" is the question that is always asked when the abolition of street railway service is suggested, "and what particular benefit would the street railways receive from its absence?"

Well, first of all there is the expensive and messy procedure of valuation. State Commissions would save thousands of dollars every year by being relieved of this duty towards street railways. Street railways would, on an average, save three times as much as the Commissions for the same reason thereby reducing expenses that could be reflected in reduced fares.

Besides valuations there are the numerous and unnecessary reports and formalities required by State Commissions in exercise of their jurisdiction over rates. A few attorneys and clerical assistants would lose employment on this score but the public and the street railway utilities would be the winners.

Finally and most important, the public relations of the companies would not be subject to political

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juggling. If street railways were allowed to charge what the traffic would bear, they would cease to become a perennial issue to candidates for public office and a straw man and punching bag for restless civic organizations. Not being subject to attack, they would not be attacked and their rates would be the same or possibly lower by reason of the economies thus achieved.

BUT what about the feasibility of such a change; how could the street railway companies ever get it across?" is the next query.

The answer to this is that probably they cannot. Probably nothing will ever be done about it. They have not united to ask for it in the past and probably will not in the future. But the fact remains that they deserve freedom from regulation and they would have it if they made their case clear to the public.

Organized solicitation for legislative reform—call it lobbying or by any other name—is the most effective form of getting results in these days of political log-rolling.

The street railways have a meritorious cause and there is no reason why the street railway companies could not gain this victory. The sugar man, the shoe man, and even the farmer has been given tariff protection and governmental subsidy. The street railway industry would not be asking for a cash hand-out from the state treasuries. It would be simply asking the respective states to let them alone and to permit them mind their own business and work out their destinies in their own way.

THE facts are clear enough. It remains for the industry itself to organize its case and carry it to the people—to make them understand that the issue may amount to Continuation of Service *v.* Continuation of Regulation.

Let the average citizen awake to such an issue and he will be as keen and zealous as he is now indifferent to letting these public service companies work out their own destiny and pass the crisis of automobile adjustment without governmental interference or restraint.

The High Lights of Commission Regulation During the Past Twelve Months

OUT of the mass of detailed work on service and rate questions which escapes general notice, ELLSWORTH NICHOLS has extracted the more significant decisions in the street railway and electric fields as the basis for his analysis and summary of the year's activities—to appear in a coming issue of PUBLIC UTILITIES FORTNIGHTLY. This comprehensive survey will include not only the regulation of service and rates, but also of mergers, of stock prices, of taxes, of investigations of records, of return and appreciation, of valuations, of return and depreciation, and of sub-metering—constituting a valuable and informative summary of the year's progress.

As Seen from the Side-lines

OHIO really likes to see herself termed as the "Mother of Presidents." Without any stretch of the imagination whatsoever she could aptly be dubbed, "Cradle of Politics."

It's the first thing she thinks of in the morning and the last thing she thinks of at night.

THERE is possibly no other state in the grand old Union in which the people so frankly, boldly, and energetically measure the comings and goings by the simple term "politics."

ASK persons on the street whether Warden Preston E. Thomas would be discharged after the unfortunate Easter Monday night fire in which 322 men were suffocated or burned to death and they would quickly reply, "Can't be done; he's got a clinch on Governor Cooper."

"WHY didn't they continue with Governor Cox's penal program after 1913?" you ask them, and they reply without the slightest hesitation, "Change of administration."

"DID you not think it strange that Carmi Thompson failed to be named United States Senator when the last vacancy arose?"

AND the invariable reply: "His firms will get some road-oil contracts and he will be satisfied."

If it rains today, there was some motive behind it. Pure and unadulterated politics. Mal Daugherty's bank fails and folks say, "The Columbus bankers tried to buy it; Mal held off and they forced him to the wall."

THE legislature adopts a lump-sum budget for the first time, and you hear on every street corner, "Gives the ad-

ministration a chance to get rid of Vic Donahey's gang."

If the boy is late with the paper, that can be blamed onto some trick of the Postoffice Department; they had a reason for it and the reason is variously and numerously described.

OHIO has had plenty of Presidents. The statues, busts, and memorials of them fill the State House grounds. Rarely has it failed to have a member of the Cabinet; it has one now. It always has had two United States Senators, but unless the census returns stop showing a drop in the peasant population, it won't be so hot on the number of Congressmen.

WHEN Carmi Thompson didn't receive the Senatorial appointment, the toga was placed on the shoulders of a former Public Service Commissioner, Mr. McCulloch, who is probably the best-versed man on publicity utility regulation in the Senate. Incidentally, the story is told here that Governor Cooper greeted the Colonel and Mrs. Thompson at a public reception and whispered to her as he looked at Carmi, "You are standing beside the next United States Senator."

ON the following day McCulloch was named and Mrs. Carmi is still wondering whether he was standing behind her and she didn't see him.

MCCULLOCH will be a candidate for election soon. He will win the nomination without even a trial heat. That he will be victorious in the election is reasonably certain, Ohio being a fairly dependable Republican state, but a doubt can be expressed now and then without getting its author into the class of, "He was good once, but, my how the poor fellow has slipped."

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TIMES are not good in Ohio. When the President decided to restore prosperity in sixty days he may have been looking elsewhere, like Cooper in speaking with Carmi's wife. Why deceive ourselves about it? That is what the Cleveland businessmen are saying. They are putting their best foot forward, but, like the old Oregon boot, it is lead-soled.

A BATCH of census returns has dropped in over the wire from Washington as this is written and the rural population, it would seem, must have seen Paris; they just can't be kept down on the farm.

RURAL banks are struggling under the strain of farm mortgages. Whether it's the yen to play a saxophone, the farm boys have gone cityward, and the lightning rod salesman tells his jokes to smaller audiences in the villages.

INTERESTINGLY enough, the Big Parade has had its effect upon the smaller cities. We see newspapers in the mid-sized industrial communities

urging the President to veto the tariff bill. They want the farm debenture or nothing. Mr. and Mrs. Farmer are not driving into town so regularly on Saturday night, and the city butcher, baker, and candlestick maker find that their cash registers have dropped from tattoo regularity to a slow beat.

AGAINST those circumstances Mr. McCulloch must campaign. And against these further facts:

THE Democrats are always strongest here in the "off" years; and they will nominate for Governor, Mr. George White, who can and will finance a campaign.

WITH White's money in the campaign, all the Democratic candidate for Senator needs to make a formidable showing is a strong voice, an alfalfa necktie, and a reputation that has not been utterly ruined.

John T. Lambert

Facts and Near Facts

It would cost about \$24,000,000,000 to eliminate all grade crossings in this country.

TULIPS were presented to 250,000 passengers on the Burlington Railroad in May.

THERE are fifteen states whose population is less than the number of gas meters in Chicago.

HALLOWEEN celebrators broke \$5,000 worth of street lamps in Rochester, New York, last October.

It is estimated by the Public Service Commission of New York that the average cost of eliminating grade crossings is about \$100,000 each.

THERE is a law on the statute books of Tennessee that requires every motor vehicle driven along any highway to be preceded at a distance of 100 yards with a herald announcing its approach.

What Others Think

The Political Assaults Upon the State Regulatory Commissions

Now that most of the legislatures of the states have adjourned, there is less talk than usual about the breakdown of commission regulation. But the charge is occasionally still made. In a letter to the *Baltimore Sun* of May 1, 1930 Chairman Harold E. West, of the Maryland Public Service Commission, declares that the assertions that regulation has failed are untrue. He says:

"It has become the fashion of late for theorists, a certain type of economists and gentlemen with political aspirations to declare that regulation has broken down or is a failure. They glibly make such statements on incomplete information and frequently on no information at all. Asked to point out in what particulars regulation has collapsed and where regulatory bodies have failed to function in accordance with the laws creating them, and with the laws as laid down by the courts, they usually take refuge in generalities, absolutely ignoring the facts, and make assumptions which have no basis other than their own ideas of what ought to be.

"I disagree absolutely with the theory that public utility regulation by state authority has collapsed, and maintain that the regulating bodies of the various states are functioning efficiently in the interests of the public and to the extent that the people of the respective states, as represented by their legislatures, desire them to function."

CHAIRMAN West points out that criticism of the Commissions comes down to a difference of opinion as to the reasonableness of rates. Upon this point he says:

"The charge that regulation of public utilities by State Commissions has broken down is based almost entirely on the belief of those who make the charge, that State Commissions are unable to reduce rates for power to a point to which they

think they ought to be reduced. It comes down then to a question of rates for power. All the other work which the Commissions do is ignored.

"As to power rates, the belief that they are higher than they ought to be seems to be based on three things:

"1. That the Supreme Court has fixed fair value of the property used and useful in supplying power as a basis for calculating a fair return and that reproduction cost is an important element in finding fair value.

"2. That vast holding companies have grown up and that these holding companies control the greater number of the operating companies which supply the people with power.

"3. That interstate transmission of power is not subject to regulation.

"It seems to me that there is no fact more obstinate, more incontrovertible than a decision of the Supreme Court, and no matter whether the complainants against the Public Service Commission feel that prudent investment, or any of a half dozen other theories for finding a rate base, would be better, the fact remains that the Supreme Court has said fair value must be the rate base, and it has laid down the rule for determining it. Regulatory Commissions must follow that rule. It by no means follows from that that regulation by state authority has collapsed."

THE *Sun* replies editorially by asserting that a distinction must be made between unrestrained regulation and regulation which has been interfered with by the Federal courts. Says the *Sun*:

"As a result of these successive legal victories the Maryland Public Service Commission at present has virtually no regulatory authority over the company. It may be able to tell it to put on an extra car or something of that kind, but in the matter of rates the company has been placed above the Commission's authority by Federal court decisions. The case of the United is unusual, and to cite it alone in

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dealing with Mr. West's argument would not be fair. However, it serves to illustrate the importance of clarifying the question whether Mr. West is treating the whole system or merely that part of it where the vital elements have not been dictated by court decisions. When that point is cleared up things will be in better shape to go ahead with a discussion of the other points in Mr. West's statement."

OF course, the Commissions cannot be blamed for adhering to the law of the land. But the point is that as the law of the land does not allow the Commissions to function in the way the

critics of regulation think it should function, they say that regulation has broken down, Commissions or no Commissions. This is, of course, merely begging the question. Very few of the critics give the Commissions credit for anything the Commissions have done.

The fact is that Commission regulation has made a very valuable contribution to the public welfare. This is indeed the mere statement of a conclusion, but it is possible to support it by an abundance of facts.

—H. C. S.

Regulatory Commissions Require Not More Authority But More Knowledge of Economic Changes

CONTRARY to a widely prevailing opinion, Professor Philip Cabot of the Harvard Graduate School of Business Administration, points out that in American business today profit is the score but not the game. The game, he says, is played for its own sake and profit is merely the test of the players' skill. The purpose of the game in all great business organizations is to improve in some degree the conditions of American life. Applying this principle to regulation, he said in a recent address:

"No system of government regulation of public utilities can in my judgment be completely successful which disregards this controlling fact and yet because it is a new fact, it is often disregarded. Regulating commissions are prone to treat public utility executives like naughty school boys and rap them on the knuckles on general principles. 'Call a dog a bad name and he will bite you' contains at least a grain of truth. Treat these men like naughty boys and they may act like them, but if you trust them and treat them like gentlemen, they will prove trustworthy."

Professor Cabot believes that regulation does not need to be made more rigid than it now is. He asserts:

"The common complaint regarding public utility regulation is that it is ineffective

and the common demand is for legislation that will make it more rigid. With both these points of view I disagree; regulation, as now practiced, is effective enough but it effects the wrong thing; far from needing to be more rigid, it is too rigid now. The regulating Commissions do not need more power but more skill in using the power they now have and more insight into the nature of the economic changes that are continually taking place. We are prone to forget that the greatest regulating Commissioner who ever served the state, Charles Francis Adams, had no power at all, except the power to advise, but he so used that power as to make it more constructive than the great battery of powers with which our Commissioners are now armed. What is needed is not new laws but a new attitude of mind which will result in a new technique of regulation fitted to the conditions of the new world. Public utility executives and regulating Commissioners are not natural enemies and should never allow hostility to come between them. The executives working for the stockholders and the Commissioners working for the customers are serving not hostile but mutual interests. In the long run neither can benefit by robbing the other and the ideal relation between the executives and the Commissioners is a round table conference of experts honestly and eagerly striving for a common end. The atmosphere of hostility which has characterized their relations in the past and has resulted in costly and harmful litigation is out of date. Like the old diplomacy which was merely another name for skillful lying, it must recognize that times have

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San Francisco Chronicle

NO WONDER ALL OF THEM DON'T TURN OUT HAPPILY

changed and must change with them. The men who manage our great public utilities today are rarely the same men who managed them thirty years ago and even then they are different. Business men in America are as iron between the hammer and the anvil of economic forces. As the power and the direction of these forces have changed, so has the character of these men. Thirty years ago the electric power industry was in the pioneering stage. The ownership of the corporations was concentrated in a few hands, the risks were great and the losses sometimes complete. Today the industry is one of the most stable in the world, the ownership of the corporations has been broadcasted like hayseed,

and the problems of management instead of being mainly of an engineering character, are economic problems such as confront every merchant."

PROFESSOR Cabot believes the attention of the Commission should be directed to the problems of marketing. Upon this point he says:

"Under these conditions regulation should turn its attention towards the delicate problems of marketing which are now of major importance. It is the total profit of the Edison Company which now chiefly engages the attention of the regulating Commissioners but what should interest

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them most are the prices charged for *particular services to particular groups of customers*. Are these prices as now fixed the best for both parties? These are very intricate questions, requiring the nicest skill and judgment for their solution and it is high time that the company executives and the regulating Commissioners stopped making faces at each other and settled down to business. Both parties have been at fault; let both make the first move.

"Then will the prophecy of Isaiah be fulfilled, 'and the lion shall lie down with the lamb.'"

In the opinion of the writer there is

undoubtedly a tendency to carry regulation, in the interest of rate fixing and financing, so far as to defeat its main purpose, which is the development of the service to the point of its greatest usefulness. The courts will never allow the Commission to become the managers of the corporation nor would it be well to do so.

—DAVID LAY

ADDRESS BEFORE THE BOSTON LEAGUE OF WOMEN VOTERS. By Professor Philip Cabot. 1930.

The Principal Source of Complaints Against Utility Rates

TO a statement in a joint resolution of the Wisconsin legislature that the public generally is complaining of the burden of high rates exacted for the services rendered by public utilities engaged in the telephone, electric light, heat, and power fields, the Wisconsin Railroad Commission, in a reply submitted to the legislature makes emphatic denial.

Says the Commission:

"We deny that such a condition exists. We do not deny, of course, that there is some complaint and that in individual localities that complaint has been rather serious, but that the public generally is complaining of the burden of high rates is not the truth. The public has been so little interested that in a very large proportion of the cases in which telephone companies have asked authority to increase rates there has been no appearance on behalf of the public and no protest against the proposed increase lodged with the Commission. In a large number of cases statements have been submitted by the companies signed by hundreds of customers agreeing to the proposed rates.

"It may be charged that the public is so hopeless of securing a fair review of its case by the Commission that in despair it has refrained from attempting any presentation. If that were the case it is reasonable to assume that there would be an avalanche of spontaneous complaints lodged with the Governors' office and with other state officials. To the best of our knowledge this has not been the case. We are not informed that either under this

administration or under previous administrations in recent years there has been more than an occasional criticism and complaint lodged with the Governor. It has never been shown to the Commission that any considerable volume of spontaneous complaints have been lodged with any other official. It is doubtless true that practically the entire body of the public would prefer to pay lower rates, but it is not true that there is any general complaint of the burden of high rates as recited in the resolution except possibly in individual localities, and an analysis of the facts in those localities will show that the complaint is not spontaneous but in practically every case has been due to agitation by some individual or small group of individuals.

"That there have been cases of spontaneous complaint in the past, we do not deny. Shortly following the war when the Commission as then organized authorized a large increase in electric rates for the Wisconsin-Minnesota Light & Power Company we believe it is correct to say that there was a very general feeling of dissatisfaction and that the rates were felt to be burdensome. Since that time those rates have been very largely reduced and we know of no evidence of any general public feeling that the rates even in those localities are now burdensome. . . . Electric rates have been reduced over a period of the past several years and the average cost per unit of energy for lighting service is materially less than it was five years ago. This does not hold true of telephone rates and from the very nature of the business cannot hold true until there may have been a substantial decrease in the cost of the elements going to make up telephone service."

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STATEMENTS that there is a widespread dissatisfaction with commission regulation, or a widespread dissatisfaction with Commission rates are mere generalizations not supported by facts.

It is very easy to make such statements and very difficult to disprove them. Most of the dissatisfaction with Commissions, which does exist, is due to misrepresentation of the facts relat-

ing to it, or lack of knowledge of the facts. If there were or ever had been a wide-spread belief that utility rates were exorbitant, the public utility enterprises of this country would not have grown as big as they are.

—D. C. S.

Statement to the Wisconsin Legislature by the Railroad Commission of Wisconsin relative to the Preamble of Joint Resolution 53A.

The Choice Between Effective Regulation or Government Ownership

THE only thing which would make the general acceptances of the government ownership of utilities possible would be the breakdown of state regulation. So declared Philip H. Gadsen in a recent address before the Pennsylvania Gas Association. He observed:

"The complete answer to public ownership agitation is effective, courageous, comprehensive regulation by Public Service Commissions. Instead of opposing the establishment of Public Service Commissions with jurisdiction over gas and electric properties in states where they do not exist at present, we should lend our aid to the adoption by such states of comprehensive public service regulation acts. Furthermore, in states where Commissions are functioning, we should support all reasonable, well-considered propositions to strengthen the regulatory power of the Commissions, to the end that they should have jurisdiction over all factors which enter into the quality and cost of service to the customer.

"The demand for Federal regulation on the one hand, and government ownership

on the other, is predicated to a large extent upon the charge that state regulation has fallen down. While it is easy to demonstrate that this is not true, the most convincing way to meet such charges is to strengthen and broaden the regulatory powers of the Commissions so as to leave no doubt in the minds of our customers and the public generally that Public Service Commissions are the most effective agencies for the protection of the public interest."

COMMISSION regulation, being a human procedure, is not perfect. It could be and should be strengthened. But that would do no good unless the public were informed of what the Commissions are doing.

State regulation, as it is, has not broken down. It continues to make as it has in the past, a most important contribution to public welfare. That statement is either true or untrue. The facts in relation to it must be brought to the attention of the public.

Will the Public Utilities Become a Major Political Issue?

Is the regulation of utilities to become a Federal political issue? This pertinent question is asked by John E. Benton, of Washington, D. C., General Solicitor of the National Asso-

ciation of Railroad and Utilities Commissioners, in one of the bulletins which he sends to the State Commissioners from time to time. Here is what Mr. Benton has to say on

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the subject of a political offensive:

"Does the fight which was made against the confirmation of Chief Justice Hughes, which is now being repeated against the confirmation of Judge Parker, have a political significance? Justice Hughes was opposed on the ground that he would strengthen the group of justices whose opinion overturned the Interstate Commerce Commission's order in the O'Fallon valuation case, for the reason, as the opinion said, that sufficient weight had not been given to present reproduction costs, and who later, in the United Railways case, set aside the Maryland Commission's fare order, upon the ground of inadequacy, when the rates permitted thereby admittedly would have been sufficient if \$5,000,000 allowed for easements to operate in the public streets had not been included. Judge Parker has not written valuation opinions, but the opposition to him sounds like the opposition to Hughes. 'I want to preserve that great judicial tribunal,' said Senator Norris yesterday, 'on a higher plane than it would be if filled with men who have the one idea, that wealth, big business, and combinations are prime considerations.'

"In both branches of Congress bills are pending to regulate the power companies. Democratic members of the committee before which the Parker power bill is upon hearing indicate unusual interest and suggest that methods of valuation should be prescribed in the bill. The Howell Resolution, in the Senate, would instruct the Interstate Commerce Commission to make valuations on the investment basis for the future.

"In New York, the legislature having passed an important bill, following a recommendation of a special commission created to study the operation of the Public Utility Act, and to recommend amendments, Governor Roosevelt interposes his veto because it provides for valuation and revaluation upon consideration of reproduction cost. The Governor says its fatal weakness is that under it the state would 'never get permanently away from the unjust and impracticable present value basis. . . . The only solution is to get on an actual cost basis.'

"A bill to provide a People's Counsel, to be appointed by the Attorney General, to represent the public interest in cases before the Commission, the Governor also vetoes, saying it is 'based upon a fundamentally false conception of the proper function of a Public Service Commission.' The Commission, he says, 'is not, and never has been, merely a court. It is rather intended to represent the public interest in connection with various industries of a semi-public character subjected to its jurisdiction. . . . The bill would divide this

responsibility for protecting the public. It would in effect reduce the Public Service Commission to the role of a near utility court in which the people would have to fight their unequal battle against the huge resources of public utility corporations.'

"A bill which would authorize utilities and municipalities to contract with each other, subject to the Commission's approval, for the fixing of rates, is also vetoed, the Governor saying: 'It makes no pretense at lifting the process of rate making out of the hopelessness of controversy and litigation into which the reproduction cost and fair value theories have plunged it. . . . It is foolish to think that any utility companies will enter into such a contract if it tends to deprive them of the benefits which they believe they derive from judicially determined reasonable returns on the so-called fair values of their properties.'

"A bill to enable the Commission to secure a stay of confiscation proceedings in federal courts under the provisions of § 266 of the Judicial Code is approved. Under it when a utility begins a confiscation suit in a Federal court the Commission may begin a mandamus action in the state court accompanied by a stay of the contested order, and thereupon may apply to the Federal court for a stay of the proceedings in that court. This bill, Governor Roosevelt says, may offer some relief until Congress shall act 'to prevent public service corporations from thwarting just and proper regulation by an appeal to the Federal tribunals before the state courts have passed upon their claims.'

"It is prophesied by many that Governor Roosevelt will follow Governor Smith as the Democratic candidate for President in 1932. Perhaps he will, and perhaps we shall then hear much more about the matters discussed in these veto messages of his."

Others think that all signs indicate that regulation will again be made a political issue. Originally one of the purposes of regulation was to take the utilities out of politics. Regulation itself now bids fair to become a political issue, at least temporarily.

One effect of this development will be that the public will find out something about their Commissions, as to which it is very poorly informed at present.

Practically all controversy over the Commissions is over rates.

BULLETIN No. 67—1930, issued by John E. Benton, Esq. Washington, D. C.

The Value of a "Good Name" for Designating an Economic Function

THE choice of a good name is as important in economics as in anything else. The names with which certain things are tagged have the power to bless or curse them. Here is a suggestion which may be of use to utility men:

"The first requisite of a railroad is the promoter. There is a good English word which has become associated with a particular calling and is not used extensively except to designate this calling, which, however, taken in its original meaning expresses probably better than promoter the functions of the man or men who furnish the initiative which is essential to a new project. The word 'undertaker' is associated in our minds unfortunately with death rather than development, but it is, when dissociated with this particular idea of death, an accurate description of the functions that are generally described as promotion.

"Because both the words promoter and undertaker carry with them connotations which are unpleasant, let us call the force represented by one or more men which supplies the initial energy for a railroad project, a developer.

"Before the passage of the Transportation Act in 1920 the developer found the chief difficulty of getting a new railroad project started, the difficulty of raising money. There was, even before the powers of veto of a new railroad project were specifically allocated to the Interstate Commerce Commission, an intangible power of veto resident in vested interests. Railroads have been built whose chief source of possible profit lay in their potential nuisance value. The fact that the Interstate

Commerce Commission must be, convinced before it issues a certificate of necessity and convenience as to the real economic need for a railroad is of real value. There are probably cases where a certificate of necessity and convenience is issued in response to a popular demand for a new railroad that is only slightly more sound economically than a child's cry for a new toy. Nevertheless the Commission has it within its power to veto an economic waste. It has exercised this power and has shown itself capable of resisting popular clamor for a new toy.

"One of the reasons that the word promoter has an unpleasant suggestion to many people is that one of the inducements held out for investment in railroad projects in the United States and in other countries in the past has been whispered 'insiders' profits.' The story of land grants by the Federal and state governments is an old story in the United States, but it was a device that the Canadian government and Provinces of Canada used to induce the building of main line and branches of what is now the Canadian National Railways."

There is no good reason why a promoter should not be as well regarded as a developer, but perhaps the use of the latter term would be a more happy choice. It might have the beneficial psychological effect of discount for prompt payment of bills, over penalty for failure to pay bills on time.

RAILROAD ADMINISTRATION. By Ray Morris. New York: D. Appleton & Company. 1930. 215 pages. \$3.50.

Other Articles Worth Reading

CHEAP POWER IN ONTARIO. *The New Republic*; pages 7-10. May 21, 1930.

MAKING THE TUMBLING RIVERS SERVE US. By Waldemar Kaempfert. *New York Times Magazine*. May 18, 1930.

MERGERS TURN ATTENTION TO NATURAL GAS INDUSTRY. By William Russell White. *Forbes*; pages 72-74. May 15, 1930.

POLITICAL RATEMAKING. *The Traffic World*; pages 1301-1303. May 17, 1930.

RECENT TRENDS IN MOTOR CARRIER REGULATION. By John J. George. *Bus Transportation*; 251-253. May, 1930.

TAPPING NEW VEINS OF ENERGY. By Waldar Kaempfert. *The New York Times Magazine*; pages 1-2 and 19-20. May 11, 1930.

THE CRUX OF THE WATER POWER ISSUE. By Walter C. Hurlburt. *National Municipal Review*; pages 292-292. May, 1930.

TRANSPORTATION IN MEXICO. By Homer H. Shannon. *The Traffic World*; pages 1253-1255. May 10, 1930.

WORLD'S BIGGEST BUYER OF COMMON STOCKS TELLS HOW. By Merryle Stanley Ruckeser. *Forbes*; pages 15-16 and 26-27. May 15, 1930.

WHAT READERS ASK

Out of the mail bag of the Editor have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do you want to ask?

QUESTION

Have any cities in the United States the right to control utility rates?

ANSWER

There are several cities which have the right to control rates charged by public utilities. We most frequently hear of rate fixing by cities through the means of franchise contracts, but in some states the power of the state to regulate rates has been delegated to municipalities.

The right to delegate this power has been sustained, but in *Agua Pura Co. v. Las Vegas*, (1900) 10 N. M. 6, 60 Pac. 208, 50 L.R.A. 224, the court seemed to disapprove the delegation of the power to fix rates at which water should be sold in a city when the city itself was a customer. It was said in part:

"There is hardly any law in this land that would make the party being furnished the judge of the price that he should pay, or would say that his arbitrary decision should fix the right of the party."

For cases in which the power to delegate the rate-making function to cities is discussed, see *Home Teleph. & Teleg. Co. v. Los Angeles* (1908) 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50; *Spring Valley Water Works v. Schottler* (1884) 110 U. S. 347, 28 L. ed. 173, 4 Sup. Ct. Rep. 48.



QUESTION

In a community where, because of the rocky soil, it is the practice to lay water mains and sewer pipes in the same trench, should a water utility be required to extend its mains

if the city is unwilling, at the time, to extend sewer lines?

ANSWER

This question was presented to the New Hampshire Commission in *Berlin Heights Addition v. Berlin Water Co.* (1919) P.U.R. 1920A, 865, and the Commission ruled that an extension of water mains should not be ordered. The Commission pointed out that it would be unwise to order the extension unless the city was ready to put in its sewer pipes at the same time. In fact, said the Commission, it is not desirable from a sanitary point of view under ordinary circumstances to have running water for domestic household use without a sewer to carry off the waste. Similar rulings were made by the same Commission in *Roberge v. Berlin Water Co.* (1924) P.U.R.1924C, 855; *Johnson v. Berlin Water Co.* (1922) P.U.R.1923A, 507.

The Wisconsin Commission, however, in *Wolf v. Waterloo* (1924) P.U.R.1925A, 181, refused to consider questions relating to sewer construction in determining whether a water main extension should be ordered for domestic purposes.



QUESTION

What is the duty of a water utility in regard to the freezing of pipes and mains?

ANSWER

It is well established that there is laid upon a water utility the duty to use all reasonable means to prevent the freezing of mains and service pipes. The company must guard against such occurrences because of the great inconvenience to which its patrons are thereby subjected, the unsanitary conditions created, and the danger to the community which must necessarily result from an inadequate

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supply of water for the purpose of fire protection. *Re Reno Power, Light & Water Co. (Nev. 1917) P.U.R.1917E, 765.* In this case the city authorities recommended that the mains and service pipes be lowered to a depth of at least 3 feet underground to prevent freezing where it appeared that pipes had been found to be frozen at a depth of 30 inches. The Commission held that this requirement was reasonable. In this particular instance grading of streets subsequent to the installation of the mains had lowered the surface to such an extent that the pipes were not sufficiently covered.



QUESTION

The Supreme Court in the leading case of Smyth v. Ames has held that among the factors to be considered in arriving at value for rate-making purposes, "the probable earning capacity of the property under the particular rates prescribed by statute should be taken into consideration." Do Commissions take earning power into consideration in fixing the value for rate-making purposes?

ANSWER

The Commissions have held in many cases that the capitalization of earnings is not a sound principle of valuation for rate-making purposes. It is difficult to see how such a factor could be of weight in determining the reasonableness of statutory rates. If such a factor were given controlling effect in fixing value the statutory rates whether high or low would always be reasonable.

The value of a private business may be determined by capitalizing its earning power because the reasonableness of its charges are not in question. If the original cost of a private plant or the cost of reproducing it were \$1,000,000 and the company were making a net profit of \$500,000 a year, the value of the plant and business would be determined not by the original cost or the cost of reproduction, but by capitalizing its earning capacity. But since the question to be de-

termined in public utility cases is the reasonableness of the rates, reasonableness cannot be determined by a valuation arrived at by capitalizing the earning power of existing rates as this would be reasoning in a circle. The Supreme Court has said that: "The value of the use, as measured by return, cannot be made the criterion when the return itself is in question; that if the return, as formerly allowed, be taken as the basis, then the validity of the state's reduction would have to be tested by the very rates which the state denounced as exorbitant; and, that if the return as permitted under the new rates be taken, then the state's action itself reduces the amount of value upon which the fairness of the return is to be computed." *Minnesota Rate Cases*, 230 U. S. 352, 57 L. ed. 1511, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18.

If a statutory rate produced a net income of \$35,000, and if, in order to determine the value of the company's property, this sum of \$35,000 were capitalized at 7 per cent, the value of the property for rate-making purposes would be \$500,000, and if the value of the property were \$500,000 irrespective of what it cost originally or what it cost to reproduce, and a return of 7 per cent were deemed reasonable, the statutory rate would, of course, be reasonable. This is a manifest absurdity.

However, the earning capacity of a public utility company might be a more important factor than either the original cost or the cost of reproduction in determining value. If a utility plant, for example, cost \$1,000,000 originally, and it would cost \$2,000,000 to reproduce it, but economic conditions were such that the company could not earn or could never be expected to earn operating expenses or any sum which would be deemed a reasonable return even on \$1,000,000, the real value of the property would be fixed by its earning capacity rather than what the plant cost originally or what it would cost to reproduce it.

But as a practical matter Commissions have not considered earning capacity as of much if any weight in fixing value, even where the companies could not earn a fair return on value fixed by a consideration of other factors, such as original cost and cost of reproduction. It is doubtful if the courts would permit a value to stand based on a capitalization of earning power.

Is There Regulatory Rebellion in the Bay State?

In the next issue of PUBLIC UTILITIES FORTNIGHTLY will appear an answer to this question by EDWARD W. MOREHOUSE, who has made a particular study of this subject. The author entertains a different view of the validity of Massachusetts regulation than that expressed by several recent lawyers and economists. In the June 26th number.

"I See by the Papers—"

* * * * John Chinaman is getting the American spirit. The Chinese in Chinatown, San Francisco, have protested an increase of telephone rates.

¶

* * * * The Florida Public Utilities Information Bureau announces that Manatee county, winner of the high county award in vegetables, has been awarded first prize in citrus at the south Florida fair. . . . As the source of the information is plainly stated and as the announcement is strictly factual, we assume that it is unobjectionable, *per se*, to even the most captious critics of the utility industries.

¶

* * * * Judge Frederick E. Crane, of the New York Court of Appeals, says that there is no competition between the state and Federal courts, and warns against being "carried away . . . by those lingering prejudices which have accounted in the past for so many distorted views and serious conflicts." . . . Aw, come, Judge, have a heart! . . . Why not let our political kiddies sport a little with this new toy, the Federal courts?

¶

* * * * A representative of the people from Carroll County, Kentucky, wants a law forbidding railroad companies from removing depots without the consent of the majority of voters who live in the district. . . . This reminds us of the remark of an irate old contractor who was asked when he was going to paint his house which was badly in need of oil and lead. . . . "I don't know," he replied. "I haven't asked the union yet whether I can or not."

¶

* * * * When Senator Capper remarked that utility rates are a tax upon the people and that levying taxes is a purely legislative function, an editorial writer hastened to assure the palpitating public that Senator Capper's sincerity is beyond question. . . . Whenever anyone makes a particularly idiotic statement, someone invariably assures us that the author is sincere. . . . The most interesting thing about foolish statements is that those who make them generally believe they are true.

* * * * "Why," the People's Lobby solemnly inquires, "did the Senate lobbying investigating committee not invite President Hoover to tell why he lobbied for the sale of Muscle Shoals to private interests in his message to Congress, the most dreadful form of lobbying?" . . . Dear me, does the People's Lobby really want the President's messages to Congress censored? . . . Or does the People's Lobby expect us to assume that (as Artemis Ward observed) "this is wrote sarkastik?"

¶

* * * * A young inventor, with the aid of his wife, saved a little money; with it he bought a few shares of utility stock. . . . Now he wants to know why his right to that stock and its earnings is not a "human right." . . . He said that he and his wife worked hard to get the stock and went without necessities they might otherwise have had. . . . "What's the difference between a human right and a property right which some of the United States Senators talk about?" he asked. . . . Ask your Senator, son; go on, ask him!

¶

* * * * The redoubtable Professor Albert Levitt of Redding, Connecticut, grade crossing crusader extraordinary, recently got a bleacher seat at the meeting of the New York, New Haven & Hartford Railroad Company by the simple expedient of purchasing a single share of stock. . . . The professor, armed with this certificate, moved for the wholesale elimination of grade crossings. . . . The motion was not seconded, however, so the militant professor was left helpless. . . . It is not easy to be a malefactor of great wealth with only a single share of stock.

¶

* * * * "So the People May Know," a serious-minded little pamphlet published in Kansas City, objects to the sale of gas and electric appliances by gas and electric companies. . . . These appliances, it insists, must be sold by "legitimate merchants." . . . Well, Brother, it's a sad fact, perhaps, but it is a fact, that customers have funny notions; if the customer gets better service at cheaper rates from the utilities he may give three cheers for the "legitimate merchants" who are charging more—but he gives his trade where the bargains are. . . . Sorry!

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* * * * It is reported that Senator *John L. Buckley* has fathered a bill which would repeal the charter of the New York Telephone Company. "The telephone company," sezee, "has not yet reached the point where it is bigger than the legislature, and the one sure and quick way to stop the increases would be for the legislature to repeal the company's charter." . . . Gosh, it is hard to conceive of a telephone company aiming to be bigger even than the legislature! . . . Some folks we know think the legislature is one of our biggest creations!

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* * * * Thirty passengers catapulted themselves from a bus in Camden, New Jersey, the other day when a man seated in a rear seat fired off a pistol. . . . The incident gives us an idea. . . . Slow loading and unloading has always been a hard nut for the street railway companies to crack. . . . Why not, when a bus or car stops, let someone discharge a pistol. . . . When the passengers are out, have someone discharge another pistol for those waiting to get aboard. . . . This would save a heluva lot of time in loading and unloading.

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* * * * If the ear-splitting noises of electric railway traffic on steel rails in city streets could be put in some sort of a silencer three-fourths of the railway troubles would be over. . . . But perhaps this is like saying we should have airplanes which go straight up like an elevator, come straight down with the speed of a feather, land on a 10-cent piece if necessary—besides being at all times as safe as a go-cart and as easy to manage as a bicycle. . . . Or as the small boy expressed it: "If I had some ham I'd have some ham-and-eggs—if I had some eggs."

?

* * * * The Detroit municipal railway has been considering a fare boost from 6 to 8 cents. . . . We are informed that in 1920 and 1921 when the municipal ownership campaigns were at their height, the signboards of the city carried such slogans as "A Seat for Everybody" and "Nickel Fares for Detroit." . . . The pledges were then made that the fare would remain at 5 cents, "as public financing was less costly than that of private concerns and, therefore, extensions and betterments can be made without additional revenues through higher fares." . . . Well, they had a 5 and a 6-cent fare for a while, anyway. . . . Slogans are often more effective than logic—and hope is eternal. . . . What would the world be without illusions?

* * * * Some public-spirited folks in New York are threatening to raise the learned professions of "hairdressers and cosmetologists" to the dignity of public utilities. . . . A bill has been introduced at the State Senate which would bring them under strict state regulation; *Miss Margaret J. Briggs*, appearing in behalf of this measure, said: "Thousands of women throughout the state have had their hair ruined by girls who know nothing about hairdressing. It is getting so that shop girls within two months are able to open up beauty shops and pose as beauty experts. We want this bill to become law." . . . Before long the New York Public Service Commission will try to figure adequate service, reasonable rates, and the depreciation on a marcelling machine. . . . Can y' imagine?

?

* * * * A determined man from New Jersey picked up his feet and boarded a 10-cent cash fare trolley car; instead of fishing out a dime, however, he tendered the conductor a shining nickel. . . . This, b'gosh, is all he thought the company ought to have and all he would give! . . . So he was arrested for disorderly conduct and convicted. . . . Forcible resistance to the payment of lawful utility charges appears to be getting as popular as hunger strikes once were. Martyrdom is O. K. with us if the martyr's cause is without blemish, but refusing to pay lawful street railway fares is like going into a bakery, walking off with a bag of buns, and tossing the baker a sixpence instead of a shilling that he demands for them. . . . If the purchaser had the whole say about prices, we'd all be riding around in Rolls-Royces—until the current stock of them was exhausted.

?

* * * * The Buffalo (N. Y.) *News* announces that the village board of Ellicottville has served notice on its water patrons who have not installed meters that all unmetered water service will be double-rated. . . . About half the services are metered. . . . Customers who do not own meters have responded by clapping an injunction on the water officials; so the question of the right of the village to double its rates to half of its customers will, therefore, have to be threshed out in the courts. . . . This just goes to show that even a municipal utility may not always walk arm and arm with its customers in a spirit of brotherly love. . . . Just imagine what the Hearst newspapers would say if a private utility company offered to do anything like that to its customers! . . . But it couldn't even if it wanted to, because the Commission would not let it. . . . Municipal utilities, however, are not regulated in New York state.

The March of Events

California

Lower Rates Expected to Follow Mergers

ECONOMIES ranging from \$1,000,000 to \$1,500,000 annually may result from the merger of the San Joaquin Light & Power Corporation, the Great Western Power Company, and the Midland Counties Public Service Corporation with the Pacific Gas & Electric Company, according to a statement by Commissioner William J. Carr. At the time the Commission approved the proposed merger Commissioner Carr said that consumers should benefit by this; that the application was so premised, and that the testimony of

A. F. Hockenbeamer, president of the company, pointed to it.

The Pacific Gas & Electric Company, as a result of Commission approval, will acquire about 62 per cent of the outstanding Great Western stock, about 52 per cent of the San Joaquin outstanding stock, and all of the Midland Counties company stock, at a cost of \$45,625,000.

Requests for approval of the acquisition of additional stock, properties, and business of the three companies have not been approved by the Commission because of a failure to show on what terms the purchase is proposed or what is to be paid for it. This part of the application was termed premature.



District of Columbia

Free Car Rides for School Children Advocated

THE school children of the Capital City have found a champion in John J. Noonan, who is fighting for free street car transportation to and from school for pupils in the District public schools. He asserts that more than 25 per cent of the school children of the city come from families wholly or partly dependent on charity.

Mr. Noonan has distributed a map which shows many of the schools of the city are

in the downtown section, which makes it necessary for children in the outlying sections to go long distances. He cited the case of a father who walked 42 blocks to work in order that his children may have carfare to go to school.

Whatever may be said of the plan as an economic or non-discriminatory matter, this advocate is apparently so anxious to secure free transportation for school children that he urges the assumption of the burden by the District of Columbia if the transportation companies can show that the burden would be too great on them.



Illinois

Traction Franchise Granted by Chicago Council

AN indeterminate franchise to the newly created Chicago Local Transportation Company was granted by a vote of 47 to 3 in the city council on May 19th, subject to approval of the voters at a special election to be held July 1st.

Under its terms the company is obligated to consolidate the surface and elevated lines and to operate city owned subways through

the central business district and feeder busses in the outlying area. The company represents a merger of the financial interests in the existing transit facilities.

Extensions of 300 miles of lines are planned.

James Simpson, of the Citizens Transit Settlement Committee, at the time the ordinance was signed by the mayor, reviewed the appointment and purpose of the Citizens Committee, which negotiated the new franchise, and commented in regard to the ordinance as follows:

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"One of the most important immediate benefits will be its effect upon unemployment. As soon as the new company is organized and has accepted the permit, work will begin on the agreed improvement. Within the first three years \$65,000,000 will be spent by the company and a total of \$200,000,000 will be spent in ten years.

"Concurrently the city will be at work constructing subways from money now in the city transit fund and from special assessments, expending in the neighborhood of \$100,000,000. This means employment of thousands of men in many trades and occupations and the consequent improvement of industrial conditions in the city."



Kentucky

Price to Related Supply Company Questioned

THE price paid by the Central Kentucky Natural Gas Company to the United Fuel Gas Company was criticised by attorneys for the city of Lexington in opposition to claims that rates fixed for the Central Company were confiscatory. Both companies, it seems, are owned by the Columbia system.

A brief filed in Federal court where the claim of confiscation is being tested asserts that the companies are one common entity and enterprise; that a corporation cannot buy from itself at a price fixed by itself and then use the price for boosting rates to the consuming public.

The Central Kentucky Natural Gas Company has been striving for a 60-cent gas rate in place of a 45-cent rate. The Lexington *Herald* informs us:

"In 1929 the city used 1,336,000,000 cubic feet of gas, charged for at 60 cents per thousand feet. Out of this money, which totals \$801,600 for the year, the consumers have a chance to recover one-fourth, or \$200,400, for their year's share in the difference between 45-cent and 60-cent gas for the year's consumption. Out of each 60 cents paid by the consumers, 10 cents is being impounded, the gas company receiving 50 cents. If the 45-cent rate is upheld, the company will be obliged to pay back 5 cents additional to the consumers on each 1,000 cubic feet of gas used.



Massachusetts

Power Bills Favored by Legislative Committee

THE legislative committee on power and light has reported favorably on seven of the ten bills recommended by the special commission which studied the public utilities situation in Massachusetts. Adverse reports were made on six measures filed by a minority dissenter of the special commission.

Among the bills reported favorably is one extending the law authorizing municipalities to buy and operate municipal lighting plants. The committee eliminated from this bill, however, a provision that the Department of Public Utilities should have the final say in determining property to be taken and the price to be paid. The right of appeal to the courts from decisions of the Department has been vigorously opposed. The Boston *Post* says:

"The committee's recommendations for broadening the powers of the State Department in dealing with light and power companies include the right to examine into con-

tracts, records, and agreements between companies over which it has jurisdiction and any companies affiliated with them. Another recommendation is that utility companies be required to furnish to the Department all information requested as to the affiliations of directors of such companies with other companies.

"Another bill would require lighting companies to secure approval of the Department in making contracts extending for a year or more. The present law does not require such approval, unless the contracts are to run for three years.

"Service contracts with managerial companies would be subject to review by the State Department, especially with reference to the amount paid for such service, under another recommendation of the legislative committee yesterday.

"The committee recommends also that the State Department be authorized to order power companies to supply municipal or private operating companies with power in the event that the power companies had previously refused to give such service."

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Complaint against Edison Rates Is Widened

THE Commission has for several months been investigating the rates of the Edison Electric Illuminating Company of Boston as a result of a petition filed against the company's maximum rate. The scope of the hearings was extended on May 14th when Attorney Wycliffe C. Marshall, counsel for a group of consumers, filed an amended petition protesting against "the unreasonableness of the company's rate schedule as a whole."

The evidence during the many hearings, says the *Boston Transcript*, has been such as to affect the entire rate schedule, and Mr. Marshall, being of the opinion that in making

a final decision, the Commission could, as far as the consumers' original petition is concerned, make a finding only as it concerns the maximum rate, filed the amended petition.

Charges were made at a hearing on May 8th that the residential consumers are required to bear the burden of commercial customers. The *Boston Globe* says:

"Mr. Marshall, counsel for certain consumers, testified regarding the effect of furnishing of current to the various outside electric companies on the Edison Company's 'peak load.' He claimed that the 'peak' of the outside companies comes about the same time as the Edison Company and believed the contention of the company that the 'peak' was due to residential customers was not correct."

Missouri

Store Claims Contract Rate Superseded by Tariffs

SUIT has been filed by a department store in St. Louis against the Union Electric Light & Power Company to recover \$400,000 which it asserts was an overcharge since April 1, 1924. The basis for this contention is that the electric utility at that time took over the generating station of a company which had contracted to sell current at fixed rates, but that the utility has discriminated against the department store by continuing to charge the contract rate instead of its regularly filed charges.

Frank Sullivan, one of the attorneys for the department store, explained the situation to the *St. Louis Post-Dispatch* as follows:

"He said that in 1912 the store leased to the Light & Development Company space in the basement of the Kingston Building at Seventh and St. Charles Street for a generating station and made a long term contract to buy electricity from the Light & Development Company. The latter company transferred its lease and contract to Cupples Sta-

tion Light, Heat & Power Company and on April 1, 1924, the Cupples Station Company was taken over by Union Electric.

"It is the contention of the plaintiff, Sullivan said, that the service is now being supplied by a public utility, Union Electric, whose rates are fixed by the State Public Service Commission, and not subject to private contract. On the other hand, Sullivan said, the defendants claim for the Cupples Company the status of a private citizen with full rights of private contract.

"In the petition, Sullivan pointed out, it is charged that Union Electric has divested the Cupples Company of all its assets and keeps the latter company alive in form only for the purpose of rendering bills to Famous-Barr; that the Kingston Building plant no longer is used as a generating station, but as a transforming station for current brought from other sources by Union Electric.

"Vice President Boehm of Union Electric said the case was not simply a matter of rates, but that the terms of the lease of the property by Cupples Company are involved. He declined to give the details of the company's defense."

New Hampshire

Commission Probes Utilities

THE Public Service Commission on May 16th ordered four public utility companies to appear on June 3rd for an investigation. The companies were the New Hampshire Gas & Electric Company of Portsmouth, the New England Electric Company of Derry,

the New England Gas & Electric Association, and the Associated Gas & Electric Company.

The proceeding was declared to be for the purpose of informing "the Commission whether or not any or all of the said companies have complied with all provisions of laws and orders of the Commission."

The Commission on May 15th, according

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to the Boston *Transcript*, suspended from sale in New Hampshire the \$20,000,000 of New England Gas & Electric Association 5 per cent convertible gold debenture bonds. The *Transcript* continues:

"The Derry Electric Company was recently put into a receiver's hands. The company is a unit of the Associated Gas & Electric Company. The New England Gas & Electric Association is reported to control the New Hampshire Gas & Electric Company.

"Concurrent with the bond sale, the Commissioner revoked the dealer in securities license held by the Associated Gas & Electric Company and ordered the company to return all licenses issued to salesmen automatically affected by the revocation order. The company was informed that this action was being taken because of 'the investigation contemplated by the Public Service Commission of New Hampshire.'

"In its order instituting the investigation the Commission ordered the companies to be represented by duly authorized persons and to submit to the Commission complete information as to outstanding issues of stock, bonds, notes, or other forms of indebtedness of the companies and any type of person or corporation associated with them in any capacity. It required the submission of complete financial statements and authority, both corporate and governmental, for issuance of evidences of indebtedness, together with complete copies of all contracts and correspondence relating to finances of the utility companies.

"The order also required submission of complete and detailed statements of the financial structures of the named companies and all associated companies, together with complete lists of stockholders, shareholders, and owners 'both nominal and beneficial.'"



New Jersey

Fares under Investigation

INVESTIGATORS of the Commission who are preparing for hearings in the fare case of Public Service Co-ordinated Transport, according to the Newark *News*, are proposing to determine a valuation by the following method: The valuation determined by a special master in 1921 will be adjusted and brought up to date. For this purpose there must be taken out of that valuation at the prices used in it all property abandoned or no longer used in the service. The historical or book cost would be translated into corresponding reproduction costs.

The finding of an exact value, it is said, will not be their object, but with an approximate value of the trolley property today as

well as the value of the bus property, the investigators will be in a position to test the return upon them.

Linked with the issues of valuation and fares, says the *News*, are two others. One is the question of competition with independent bus operators, notably in Hudson county; the other is the question of proper service. Public Service, while in theory a transportation monopoly, is like most of the trolley systems of this day forced to compete with independent bus operators.

The company has been operating for several months with a 10-cent fare, or ten tokens for 50 cents, as an experiment. Efforts before the courts to upset this experiment have failed. Several cities are actively opposing the new fares.



New York

Temporary Fare Increase Asked in Buffalo

A FEDERAL statutory court took under consideration on April 24th a plea by the International Railway Company for a temporary order allowing a 10-cent fare in Buffalo. Members of the court met on May 3rd, after which it was intimated that it might be several weeks before a decision could be made. There is a mass of testimony, briefs, affidavits, charts, and exhibits to be perused by the judges.

Attorneys for the city of Buffalo suggested immediate appointment of a master to hear evidence in the trolley fare case. The city wanted the temporary increase to be denied as it was ready to try the case itself at an early date.

The city of Buffalo has attacked the company's valuation and charged mismanagement and operation of worn out street cars. One of the targets for attack was a claim of \$22,165,106 for intangibles, including supervision, engineering service, commissions, fees for lawyers, operating schedules, losses, and other items. The city estimated these at

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\$3,199,016 in making out a reproduction cost of \$19,000,000 for the system. Representa-

tives of the company claimed a valuation of \$60,290,131.

Pennsylvania

Utilities Urged to Have Open Mind on Utility Laws

PHILIP H. Gadsden, vice president of the United Gas Improvement Company, in an address before the Pennsylvania Gas Association on April 30th, urged the companies not to oppose any and all amendments to the Public Service Commission laws, but to continue to approach them with open minds prepared to accept such as seem to be necessary to give the Commission complete jurisdiction over operating companies. The Philadelphia *Public Ledger* reports:

"Mr. Gadsden pointed out that it is the policy of public utilities to put into effect lower and lower rates in order to induce greater and greater use of the service, and that as a result of this policy, according to an official statement of the Pennsylvania Public Service Commission, reductions in gas and electric rates during the years 1927, 1928, and 1929 have resulted in a cumulative saving to customers of more than \$20,000,000. United Gas Improvement has made reductions in gas and electric rates during the last five years

which have resulted in a direct saving to customers of more than \$8,500,000, said the speaker."

The speaker said that in his judgment the only thing which would make the general acceptance of public ownership possible would be the break down of state regulation, and that the complete answer to public ownership agitation is effective, courageous, comprehensive regulation by Public Service Commissions. He declared that the utilities should lend aid to the adoption by states of comprehensive public service regulation acts. He continued:

"The demand for Federal regulation on the one hand, and government ownership on the other, is predicated to a large extent upon the charge that state regulation has fallen down. While it is easy to demonstrate that this is not true, the most convincing way to meet such charges is to strengthen and broaden the regulatory powers of the Commissions so as to leave no doubt in the minds of our customers and the public generally that Public Service Commissions are the most effective agencies for the protection of the public interest."

Rhode Island

Taxicab Hearing

THE Commission has been busy with petitions of taxicab operators for certificates of public convenience and necessity to continue operation after July 1st under the new taxicab law passed by the legislature this year. This law placed the cabs under the control of the Utilities Commission.

Terminal Cab, Luxor, and Red Top, which are controlled by the Rhode Island Public Service Company, and control approximately 80 per cent of the cabs operated in Providence, are among the petitioners.

A statement announcing the purchase of

several taxicab companies and independents by the Public Service Company, according to the Providence *News-Tribune*, states that for the present the cabs will be operated at the present rate of 25 cents in Providence, but that after July 1st when the Commission assumes supervision of all taxicabs operating in the city, fares may be boosted so that competition with the street railway will be minimized.

The company has announced the principle of adequate service at reasonable rates. During the past there has been considerable price cutting, and a taxicab rate war has made the transportation system uncertain.

Washington

Tacoma to Buy Company Power to Avoid Shortage

THE city of Tacoma, under a contract negotiated with the Puget Sound Power &

Light Company, according to the Tacoma *News-Tribune*, will buy its power from the private company until all power projects now being constructed by the city can be completed. This is expected to eliminate all possibility of the power shortage next Fall like that

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experienced last year which played havoc with Tacoma industry. The *News-Tribune* says: "The contract will mean that the city will discontinue purchasing power from the city of Seattle, except at such times that the power company is unable to furnish the power or when the city's demand is greater than the 20,000 kilowatt maximum named in the contract under consideration.

"The rates to be paid the Puget Sound

Power & Light Company under the contract are materially lower than those now paid to the city of Seattle for similar service.

"Hydroelectric power would be delivered in Tacoma at 1-cent per kilowatt hour. The Seattle price is the same, but the power is delivered at the Seattle end of the intertie system, necessitating the city of Tacoma, absorbing the line loss which is about 8-10 mills per kilowatt hour."



West Virginia

New Rates to Encourage Use of Electricity

RATE schedules agreed upon by the West Virginia Public Service Commission and the Appalachian Electric Power Company, operating throughout southern West Virginia, effective July 1st, are expected to encourage a larger use of current by means of lower rates for large consumption. This should stimulate the use of appliances.

The new schedules were declared by Chairman I. Wade Coffman, of the Commission, to be a departure from the system of charges that have been in use for years based entirely on a rate per kilowatt hour of consumption. They set up three types of domestic service and provide for monthly consumer service and energy charges for kilowatt hours consumed.

It has been explained that the rates amount to a reduction in general from 15 to 30 per cent under rates now in effect. Uniformity in all districts is one of the features of the new schedules. The *Huntington Herald-Dispatch* informs us:

"General lighting service rates under the new schedule call for a customer's charge of \$1 monthly and 4 cents per kilowatt hour for energy consumed. For general domestic service, the monthly customer's charge will be \$1.25 while the energy charges will be 4 cents for each of the first 50 kilowatt hours and 3 cents per kilowatt hour for all over 50 kilowatt hours. Rates for domestic service including range and water heating will be \$2 monthly customer's charge and 4 cents for each of the first 50 kilowatt hours, 3 cents for each of the next 150 kilowatt hours and 2 cents per kilowatt hour for all energy consumed in excess of 200 kilowatt hours."



Wisconsin

City and Street Railway Take Fare Case to Court

THE Electric Company on May 9th instituted suit in the Dane county court to review the recent order of the Railroad Commission fixing street railway fares. Earlier in the week the common council ordered the city attorney to appeal from the same decision.

The company contends that the increased revenues obtained by the order will be insufficient, while the city contends that the fares fixed will result in discrimination against city residents. Both parties object to the extension of the single fare zone. The company wants the old zone restored which would not include North Milwaukee, while the city wants the first zone to include North Mil-

waukee by following the boundaries of the municipality.

The proceedings before the Commission were started by the company in January, 1928, when the railway asked for higher fares, with reductions for regular riders. The city in September, 1929, complained against the company demanding that the single fare area be extended to North Milwaukee following annexation of that suburb. Later the city amended its petition to include in the single fare area all territory within the corporate limits.

After several hearings the Commission authorized a 10-cent cash fare in the metropolitan district. This was a victory for the suburbs. There was also authorized a rate of six tickets instead of the former eight tickets for 50 cents, as well as a weekly transferable unlimited pass for \$1.

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The Latest Utility Rulings

INDIANA COMMISSION: *Re Hendricks County Telephone Co.* In modifying considerably a proposed rate increase for telephone service at Clayton, Hazelwood, and Stilesville, Indiana, the Commission took into consideration the value of the service to the public and stated that "to fix rates in the instant case that would yield a return of 7 per cent upon the estimated cost to reproduce the property depreciated would result in rates that would make the charges for service excessive."

INDIANA COMMISSION: *Re Knightstown Telephone Co. v. Kreig.* An individual having constructed a high tension electric wire in such way as to destroy the usefulness of a telephone line of the complainant by reason of electrical induction was directed to remove his lines and not to construct them except under supervision of the Commission's engineer.

KENTUCKY COURT OF APPEALS: *Red Diamond Bus Line Co. v. Cannon Ball Transportation Co.* The Commissioner of Motor Transportation was held to have no authority to grant an application for a certificate of convenience and necessity for the operation of a bus line over a route, where two or more lines have already been established, in the absence of proof that existing service is insufficient. The Commissioner's powers were said to be limited by Kentucky statute § 2739.

MISSOURI COMMISSION: *Re Burlington Transportation Co.* As between two motor carriers asking authority to operate between the Iowa-Missouri State Line and St. Joseph, the Commission awarded the certificate to the Burlington Transportation Company, which proposed to render not only interstate service over the whole route, but also a limited intrastate service. The Commission took the occasion to comment upon the futility of much irrelevant and incompetent testimony adduced in such cases.

MISSOURI COMMISSION: *Re Westhoff Light & Power Co.* A small electric company operating in good faith without authority of the Commission and without having filed proper rates and schedules with the Commission, was directed to comply with the law immediately, the Commission suggesting such matters as were necessary in achieving such compliance. The Commission also suggested that the company take proper steps to install alternating current where numerous customers had complained of the direct current.

NEBRASKA COMMISSION: *Re Continental Telephone Co.* Application of the Continental Telephone Company for authority to establish automatic service and to charge cer-

tain rates therefor at Columbus and Duncan exchanges was granted. The proposed rates were calculated to yield a return of approximately 6 per cent. The Commission stated that the expense of such service improvement should be borne by the utility and not amortized as an annual operating expense in view of the fact that the company had voluntarily solicited such a change.

NEBRASKA COMMISSION: *Re Nebraska Natural Gas Co.* An application by a natural gas company for authority to issue 5,000 shares of its common stock, 10,000 shares of its preferred stock, and bonds in the amount of \$1,000,000, was granted. The Commission in commenting upon the fact that the applicant was the first company to bring natural gas into the state of Nebraska ruled that it should properly be considered as a public utility subject to Commission regulation.

NEW JERSEY COMMISSION: *Re Hackensack Water Co.* A horizontal increase of 20 per cent in rates was approved. A rate base of \$21,500,000 was fixed.

NEW YORK COMMISSION: *Re Niagara Power Corp.* The Niagara corporation was directed to produce actual evidence that its proposed absorption of the Mohawk Hudson Power Corporation is in the interest of the public as a prerequisite to Commission approval.

NEW YORK DEPARTMENT OF PUBLIC SERVICE: *Huntington Chamber of Commerce v. Long Island Railroad Co.* An improvement of service was ordered along the Long Beach, Huntington, and Far Rockaway route. The company was ordered to make studies covering the feasibility of a higher acceleration for its multiple unit and electric locomotive equipment.

OHIO COMMISSION: *Re Railway Express Agency, Inc.* The express company was authorized to operate as a motor carrier between certain points where railroad train service previously used by the express company had been abandoned and where no other facilities were available for its use. The order of the Commission rescinded a previous order, issued last March, refusing such authority.

OKLAHOMA SUPREME COURT: *Oklahoma-Arkansas Telephone Co. v. Southwestern Bell Telephone Co.* An order of the Corporation Commission directing an independent telephone company to turn over certain toll funds to the Bell Telephone Company in accordance with a mutual agreement entered into between the connecting companies was reversed. The court held that the Commission was without authority to order connecting telephone companies to make settlements on the basis of mutual agreement, and that the

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Oklahoma Constitution (§ 5, article 9) contained a mandatory provision requiring physical connection of telephone lines operated for hire so as to permit a continuous transmission of messages for the convenience and benefit of the public. The appeal was taken by the independent telephone companies. (Reviewed in the next issue.)

PENNSYLVANIA PUBLIC SERVICE COMMISSION: *Re Dalton Street Railway Co.* The Dalton Street Railway Company and other railway companies were given authority to sell certain electrical generating property to the Abington Electric Company upon evidence that the price to be paid for the property was reasonable, and that operating economies would accrue, and that the cost of purchased power to the traction companies under the proposed arrangement would not be in excess of the cost of generation under their own management, particularly in view of the intention of the Abington Company to build a competitive plant should the authority be refused. For these reasons the Commission overruled the objections of the bondholders of the traction companies that their security would be impaired by the proposed sale.

PENNSYLVANIA SUPREME COURT: *Tyrone Gas & Water Co. v. Tyrone Borough.* An order of a lower county court authorizing a borough to acquire the water works of a combination utility without also acquiring the gas works of the utility was reversed. The court held that an acceptance by the combination utility company especially chartered in 1865 to carry on the joint business of supplying gas and water, of the provisions of a general incorporation act in 1874 was in no sense the abandonment of its right to pursue both businesses, and that the municipality after twenty years could not acquire the water works without also acquiring the gas business.

UTAH PUBLIC UTILITIES COMMISSION: *Re Pickwick Stage Lines, Inc.* Applications of the Pickwick Stage Lines, Inc., Utah Parks Company, Salt Lake & Utah Railroad Company, and Rio Grande Motor Way of Utah, Inc., to render automobile passenger, baggage, and express service between Salt Lake City and Payson over U. S. Highway No. 91, commonly known as the Arrowhead Trail were denied. The Pickwick Stage Lines, Inc. and the Utah Parks Company were authorized to render service over Highway No. 91, between Payson and the Utah-Arizona State Line. The Commission denied the petition of the Salt Lake & Utah Railroad Company to revoke the inactive certificate of T. W. Boyer

UNITED STATES SUPREME COURT: *Georgia Power Co. v. Decatur.* The court affirmed a judgment of the supreme court of Georgia requiring a street railway to continue service under a contract fixing a specified rate of

fare. Although the company alleged confiscation because it was losing money, the contract was held to be still in force.

UNITED STATES SUPREME COURT: *Broad River Power Co. v. South Carolina.* A requirement by the supreme court of South Carolina that a consolidated street railway and power company resume operation of street railway service previously abandoned was upheld.

UNITED STATES SUPREME COURT: *Corporation Commission of Oklahoma v. Love.* The court reversed a lower court ruling under which the Commission was restrained from issuing a ginning license to a co-operative company. It was ruled that an individual operating a cotton gin was not deprived of property rights by the grant of a license to a competitive co-operative organization.

UNITED STATES SUPREME COURT: *North Dakota Railroad Commissioners v. Great Northern Railway Co.* It was held that intrastate railroad rates fixed by a State Commission must be considered lawful until they are adjudged by the Interstate Commerce Commission to cause an unjust discrimination against interstate commerce.

WISCONSIN COMMISSION: *Re Atwood Telephone Co.* An application for an order to impose a straight message rate instead of a flat switching charge on two rural lines was denied upon evidence of the inconvenience that would accrue to the subscribers affected.

WISCONSIN COMMISSION: *Re Milwaukee Electric Railway & Light Co.* Recent changes were made in the street car fares and boundaries of the single fare area of the Milwaukee Electric Railway & Light Company to take effect May 4th. Some fares were increased within the city limits and reduced in the suburbs by giving outlying cities and villages a single fare. The company was asked to reduce electric rates and power rates sufficiently to offset the resulting increase in revenue to the company under the new fare schedule. The increased cash fare was from 7 to 10 cents, tickets to be sold at six for 50 cents, as compared with the old rate of eight for 50 cents. The background of this decision was the controversy which has long waged over the annexation of North Milwaukee, and the demand by that community that the single fare area be extended to its northern limit. In outlining the limits of the single fare area the Commission order ignores city boundaries.

WISCONSIN COMMISSION: *Re Wauwaukee Telephone Exchange.* An application of a telephone company for a 25-cent differential between desk sets and wall sets was modified to 15 cents where a 25-cent differential already existed between hand sets and other equipment.

The Utilities and the Public

A Change of Regulatory Policy toward Rural Electrification

ARE the Commissions doing something for farm relief? Apparently all the statistics and data about the plight of the farmer brought forth during the recent discussion about Federal aid has had its effect on regulatory bodies. One of the outstanding developments in the last few months in the regulation of electric utilities has been an apparent change of policy of certain Commissions with regard to rural electrification. This change, which has almost reached the proportion of a definite trend, appeared almost simultaneously in three states, Alabama, Georgia, and Ohio. It is now under serious consideration in New Hampshire.

What change? Well, in a nutshell, these Commissions are beginning to make electric companies extend service into rural territory without the guarantee heretofore required by these utilities. It used to be the practice and still is in most states for the Commission to compel electric companies to extend service to rural consumers only when the cost, or some portion thereof, is paid by the prospective users of electricity.

Now, all promises to be different in the three states mentioned. Last November the Georgia Commission issued an order directing a reduction in rates in rural territory calculated to stimulate rural electrification.

The Alabama Commission hasn't definitely taken the step, but it has ordered all the electric companies of that state to show cause by June 2nd why it shouldn't. In a statement issued May 10th this Commission stated:

"The Commission is of the opinion that it is the duty of all electric utilities in the state to extend their service lines into rural territory at their own expense when it is economically possible. Even at a cost somewhat above the general average of rates for urban centers the cost of electricity and electric power, where it is practicable to adapt electricity to farm power requirements, would be much less than the present cost of mechanical and animal power in use, and for this reason every interest in the state should do its part in bringing the advantages of electricity to the largest and most important of our industries."

From Ohio came an order of the Commission last May 7th, directing an electric company having a rural line paid for by customers to furnish service to other prospective customers, regardless of the refusal of the newcomers to share the cost of construction. Last April, the Ohio Commission ruled that electric companies must make line extensions at their own expense, where rural customers are willing to sign 4-year contracts paying a minimum monthly bill of not more than 2 per cent of the proportionate cost of extension.

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Chairman Morse of the New Hampshire Commission announced May 13th that his board was making a study of the most equitable method of providing for rural electrification, pointing out that at present prospective rural customers are required to pay part of the cost of extensions.

Now, what is the effect of this policy? Electric utilities are permitted by law to charge enough to earn a reasonable return, regardless of the particular rates to different classes of patrons. So it can be easily seen that any operating loss resulting from an extra liberal rate to the farmer will have to be made up by the rates of his urban brother.

Perhaps it is a good policy. Direct Federal aid to the farmer by recent congressional action was predicated on the principal that the farmers'

troubles are of such concern to the country at large as to warrant subsidy from the Treasury. Likewise, the progress of rural electrification may be so important as to require a helping hand from everybody.

But should "everybody" be restricted to the urban electric consumers? If rural electrification is everybody's problem, wouldn't a direct subsidy from tax funds be more equitable than making other electric consumers bear the whole burden? What particular benefit do these other electric consumers get from the progress of rural electrification that does not accrue to people who do not use electricity? Better crops, better vegetables, contented cows and farmers—are all these blessings solely for the advantage of the urban or commercial user of electricity?



Street Railways and the Service Charge

ONE of the biggest problems facing public utility companies today is how to reward the good customer and burden the occasional one according to their respective merits. This problem is important not as an abstract matter of justice, but because scientific rate revision, good public relations, and the general economic soundness of the utility business depend upon putting the costs where they belong.

But how can they do it without roughing up smooth public relations? How can the gas and electric companies convince the customer who goes away for the summer that he ought to pay for the cost of readiness to serve

him when he hasn't used either service? These companies have reached some degree of success by disguising service charges in monthly "minimum charges."

The street railway companies, however, have the same problem without such a handy remedy. They cannot charge street car riders minimum bills. The nearest they can come to it is to charge more for cash fares than for tokens, thereby making the occasional rider pay more than the patron who rides a given number of times.

But that doesn't offset the inequality between the occasional rider and the faithful regular rider. The occasional rider may ride just often

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enough to warrant the purchase of a set of tokens and still not bear his share of operating cost with due regard to his use of the service.

During the past year two important experiments have been made by street railway companies to reward the faithful rider and to stimulate patronage. In St. Louis, at the suggestion of the Missouri Commission, the street railway company has sold weekly commutation tickets for 90 cents, good for twelve rides if used within the week, and permitting rides to ticket holders in excess of twelve at 5 cents a ride during the same week. The casual rider is charged a cash fare of 10 cents.

More recently, the Wisconsin Commission has permitted the Milwaukee Electric Railway & Light Company to sell a weekly pass for \$1 which is good

for an unlimited number of rides and is transferable. The cash fare is 10 cents. This is an effort to stimulate an off-peak load and at the same time reward the faithful riders.

There will probably continue to be more attempts to fix the burden of the cost of ready street railway service. In New York city, where the cost of subway operations is borne, in part at least, by the taxpayer—this factor of ever ready service to the community may be argued as the economic justification for such assessments. In New Hampshire the exemption of unprofitable street railways from taxation has a similar background. Boiled down, it simply amounts to the fact that a transportation system, ever ready to serve a community, is a benefit to everyone in such a community whether he ever uses it himself or not.



Is It the Duty of a Traction Company to Run Busses?

BUS operations are supposed to serve a definite public need in order to justify their existence. When there is already an established transportation agency in the field, this new public need, if we correctly interpret established regulatory principles, must be in addition to or at least not vitally adverse to the public need for the existing service.

Of course, it may so happen that the need for the new service, while seriously adverse to the existing service, is superior to it. The number of people served seems the fairest and surest test. Will the greater number benefit by the proposed service? Per-

haps existing service is inadequate or rates are much higher than the proposed service. What do the majority of the people need?

Only a few weeks ago, the Missouri Commission turned down an application of a bus operator for authority to render service over a line substantially in competition with an established traction system. Evidence showed that the motor carrier was handling 500 passengers a day—the street railway was handling 8,700 passengers a day. Which service was more useful to the public? The answer was simply a matter of mathematics.

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It is significant to note, however, that the Missouri Commission, in turning down the application of the motor carrier, at the same time *ordered the street railway company to install bus service* to take care of the passengers previously carried by the bus operator. The 500 a day load was not sufficient evidence to warrant competitive service. But it was sufficient evidence that a fair fraction of

the citizens wanted to ride on rubber and not by rail.

This seems to be following the principle of regulated monopolies to its logical conclusion. The existing transportation companies owe a duty not only to themselves, but to the public at large to keep their service free from such competition as can be anticipated by a wide-awake public utility management.



The Great Future Battle of Service

ALL the creature comforts of mankind can be resolved into four elemental requirements — eating, drinking, shelter, and clothing. Modern complex civilization has, however, divided these four simple demands into thousands of refinements. Utility service is used in the fulfilment of all four. We cook with gas. We drink water—occasionally, at least. We light our homes with electricity and build them with powered engines. Our clothes are made in mills operated by electricity, stored in warehouses, and shipped by common carriers.

In all of these fields, some form of utility has monopolized different special phases of service to man—monopolized them often to the extent of reaching the saturation point. Barring advances in rural electrification—there will be no startling increase in domestic electric patronage beyond the normal increase of population within the next twenty years.

Looking far ahead, therefore, the question presents itself—where will the utilities of the future grow? The answer is—new fields. When its

available field becomes crowded, a business must either take over or *create* a new field, or else resign itself to the supply of current demand.

One of the best reasons for the rapid development and success of the electric industry has been its ability to break into new fields. Not satisfied with illumination, it has stormed and captured the businesses of refrigeration, house cleaning, house cooling, and is at present laying siege to the field of cooking. The gas industry, also, has lately stirred itself and has started a competitive battle for many of these new fields.

To these two industries then is given the greatest promise of future expansion. House heating, now in the hands of the coal industry, is the logical big prize to be fought for. The late electric wizard, Steinmetz, predicted the ultimate discovery of a practical method for house heating by electricity at low cost. So far, this prediction has not materialized—but much midnight oil or electric current is being burned in the research laboratories of the electric companies.

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND
RECOMMENDATIONS OF COURTS AND COMMISSIONS



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RE INTERBOROUGH RAPID TRANSIT CO.
NEW YORK DEPARTMENT OF PUBLIC SERVICE
METROPOLITAN DIVISION (TRANSIT COMMISSION)

Re Interborough Rapid Transit Company

[Case No. 2989].

Security issues — Capitalization of interest profits.

There being some question as to the propriety of permitting a utility to issue securities to raise money amounting to the difference between an amount allowed for interest during construction under a certain contract, and the amount actually paid out for such interest—or a so-called “interest profit”—the Commission deducted such amount from the total requested in an application for authority to issue securities, without prejudice to the right of the utility to have the propriety of such deduction considered on a subsequent application.

[April 9, 1930.]

APPPLICATION of a rapid transit company for authority to issue certain securities; granted with modifications.

FULLEN, Chairman: The interborough Rapid Transit Company has applied under § 55 of the Public Service Commission Law for this Commission's consent to the issue and disposal, at par, of \$6,490,842, of its 5 per cent gold bonds, due in 1966, and secured by its first and refunding mortgage, dated March 20, 1913, to reimburse that company for moneys actually expended by it for capital purposes from income or from other moneys in its treasury not secured or obtained from the issuance of stocks, bonds, notes or other evidences of indebtedness, as follows:

- | | |
|--|--------------|
| (a) \$3,226,077 expended within five years next prior to the filing of the company's application on account of: | |
| Contributions to construction—Contract No. 3 . . . | \$43,622.54 |
| Additions to construction—Contract No. 3 | 15,903.70 |
| Additional equipment—Contract No. 3 (including \$103,700 for debt discount on Series “B” and “C” equipment trusts) . . | 3,165,045.63 |

- | | |
|---|----------|
| Equipment — Contracts Nos. 1 and 2 | 1,505.12 |
| (b) \$2,890,000 expended within five years next prior to the filing of the company's application in paying off and discharging at par certain of the annual maturities of its equipment trust certificates, Series “A,” “B,” and “C.” | |
| (c) \$374,765 expended by the company for capital purposes between January 1, 1921 and September 30, 1925. | |

The record shows, and the examination made by the Commission's accountants confirms the fact, that the company actually expended for capital purposes the above-stated amounts and that such expenditures were made from income or from moneys other than those derived from the sale of stocks, bonds, notes, or other evidence of indebtedness.

The present application, in so far as it includes a request for authority to issue bonds for the respective amounts stated, under subdivisions (b) and (c) above, viz. \$2,890,000

NEW YORK DEPARTMENT OF PUBLIC SERVICE

and \$374,765, is related to the company's previous application in Case No. 2786. In that case the company had applied for authority to issue \$10,780,139 of its first and refunding mortgage 5 per cent gold bonds, but the Commission by its order of April 27, 1927, only allowed the issue of \$7,515,374 and deferred the consideration of all questions with respect to the difference (\$3,264,765), without prejudice to the company's right to bring such questions up for the Commission's consideration on a further application. It appeared in that case that the company asked leave to issue bonds to "reimburse" itself to the amount of \$2,890,000 for moneys which the company had not spent but would later be required to spend in discharging and extinguishing certain of the annual maturities of its equipment trust certificates, then outstanding. Commissioner Lockwood pointed out in his opinion that § 55 of the Public Service Commission Law does not authorize the issuance of securities for the reimbursement of *contemplated* expenditures but only for the reimbursement of "moneys *actually* expended." Accordingly, the sum of \$2,890,000 was excluded from the authorization given at that time to issue bonds for reimbursement purposes, but without prejudice to an application to capitalize that sum after it had been spent for the purposes mentioned. The record in this case shows that the amount of \$2,890,000 was spent from the company's income or other moneys in its treasury not obtained from security issues for retiring all of its outstanding equipment trust certificates, said moneys being spent be-

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tween November 1, 1927, and November 1, 1929.

In passing upon the prior application, the Commission accepted the recommendation of its accountants and deducted \$374,765, which represented the excess of replacements over the retirements reported at that time, and deferred the consideration of all questions relating to that deduction without prejudice to such consideration on a subsequent application. The Commission's accountants now report that the excess of retirements over replacements to September 30, 1929, totals \$514,353.77 and they recommend the deduction of that sum from the amount of bonds to be authorized.

They also recommend the deduction of a so-called "interest profit" of \$415,610.60 which the company, in connection with its former application, had included in its statement of cash provided from income or other sources other than the proceeds of funded obligations. That sum represents the difference between the amount *allowed* for interest during construction in determining cost under Contract No. 3 and the amount *actually paid out* for such interest. The accountants report that this difference or "interest profit" of \$415,610.60 was obtained from the proceeds of the company's bonds and that expenditures therefrom should not have been permitted to form the basis of the issuance of additional bonds.

The two deductions above referred to and totaling \$929,964.37 were not discussed at the hearing in this case but were the subject of an informal conference between the Commission's and company's representatives. As a

RE INTERBOROUGH RAPID TRANSIT CO.

result of that conference, the company's representatives stated that the company would accept an order in this case with the aforesaid amount deducted from the total issue requested, but without prejudice to its right to have the propriety of such deduction considered on a subsequent application. Under the circumstances, I see no impropriety in inserting in the order in this case a provision to that effect.

An order may, therefore, be made authorizing the issuance of the company's first and refunding mortgage 5 per cent gold bonds to the amount of \$5,560,878 instead of \$6,490,842 set forth in the company's application,

upon the same conditions, so far as applicable, as were contained in the order in Case No. 2786.

It may be noted that none of the bonds now authorized are to be sold to the public but all are to be delivered to the trustee under its first and refunding mortgage to be held in special trust and to be applied, at par, upon the company's request in the discharge *pro tanto* of its obligation, as provided in the agreement dated September 1, 1922, between the company and the Interborough Bond and Note Holders Committee, requiring certain additional payments on and after July 1, 1926, into the sinking fund established by the aforesaid mortgage.

MISSOURI PUBLIC SERVICE COMMISSION

Maryville Electric Light & Power Company

v.

Gene Ewing et al.

[Case No. 6649.]

Discrimination — Preferential rates — Rural consumers — Electricity.

An electric utility, on its own application, was given authority to remove a discriminatory rate preference to four rural consumers and to increase their rates so as to conform with the general rate schedule for such service, notwithstanding an alleged contract between such consumers and the utility.

[April 2, 1930.]

APPPLICATION of an electric utility for an order authorizing increase of rates to four consumers; granted.

I.

ING, Commissioner: This case originated on the application of the Maryville Electric Light & Power

Company for an order authorizing an increase in rates of four farm customers living south of Grant City in Worth county, Missouri.

MISSOURI PUBLIC SERVICE COMMISSION

The application, among other things, alleges that at the time the applicant purchased the electric generating plant at Grant City, there was a farm line running south supplying six rural customers, to wit, Gene Ewing, T. L. Bressler, J. L. Craven, Emmanuel Bressler, R. H. Lowry, and B. C. Drummons: that these customers were billed at that time on the Grant City lighting rate and, with the exception of R. H. Lowry and B. C. Drummons, are still billed on the present Grant City lighting rate.

The application further states that this farm line was built by the above-named farm customers but was turned over to the Maryville Electric Light & Power Company and the wires were placed on the applicant's poles at the time the applicant constructed its present transmission line; that the present condition of its transmission line is very hazardous; that the line was built so long ago that it is obsolete and not safe to be along the public highway; that the stub line leading from the transmission line supplying Mr. Craven and Mr. Bressler is in such condition that it needs immediate replacement, and that the repairs on the entire extension will cost approximately \$2,000.

This case was heard by a special examiner of the Commission at Grant City on February 21, 1930.

II.

Mr. Ray L. Harrison, testifying on behalf of the applicant, stated that in 1922 or 1923, the applicant constructed a transmission line to supply Grant City with Electric power; that at that time there was a farm line running south supplying certain

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customers, among which were the four farm customers whose rates are sought to be increased; that it was desirable that this transmission line be on the side of the road opposite the telephone line extending along the same highway; that Mr. Helmers, the manager of the electric company at that time, negotiated a deal with said farm customers whereby they agreed to put their line on the electric company's poles, thereby eliminating the customer's pole line, and that the applicant has since maintained said line; that the existing line is now obsolete, hazardous, and dangerous to life; that it has fallen over several times, and the applicant is anxious to completely rebuild it in accordance with the provisions of the Bureau of Standards and supply it with modern equipment.

The four farm customers whose rates are sought to be increased contend that they are entitled to the Grant City rate; that approximately fifteen years ago, they entered into an oral contract with the manager of the then existing electric company, whereby these farm customers agreed to give to the electric company their poles, wire, transformers, and all other electric equipment owned by them; that they were to receive in return whatever rate was granted to the citizens of Grant City, and that this rate was to continue perpetually. The applicant contends that it has lived up to and fulfilled any obligation the Electric Light & Power Company may have entered into with reference to rendering service to these patrons; that it has permitted said patrons to have electric service at the Grant City rate, until the line taken over by it has

MARYVILLE ELECTRIC L. & P. CO. v. EWING

become obsolete, and the poles erected by them fifteen years ago upon which to place the wires of said farmers, and yet in use, are in a dangerous condition; that said line must be entirely rebuilt with an approximate expense of \$2,600.

The testimony shows that two of the six farm customers have gone over to the farm rate, to wit, Mr. Drummons and Mr. Lowry. Mr. Drummons' rate increased his bill slightly, and Mr. Lowry's rate reduced his bill approximately \$26 per year.

The testimony further shows that for the year 1929, Mr. Gene Ewing's average monthly bill was \$2.25, and that his average bill on the requested rate would be \$4.78 per month. Mr. Dora Dressler's average monthly bill for the year 1929 was \$3.80. On the proposed rate, it would be \$5.42 per month. Mr. John Craven's average monthly bill for the year 1929 was \$3.34 and on the proposed rate would be \$5.62. The average monthly bill of Mr. Emmanuel Bressler for the year 1929 was \$4.40. At the proposed rate, his average monthly bill would be \$6.25.

The average monthly bill for 159 customers of the applicant is \$6.27, and the average monthly bill of the 4 customers in question would be approximately \$5.50 under the regular farm schedule.

The poles on which the wires of the line in question are attached are 25-foot poles. The Commission, under standards prescribed by the Bureau of Standards, requires such poles to be 30 feet in length and this Commission has uniformly adhered to that rule.

On September 13, 1927, the applicant filed with the Commission a schedule of rates applicable to its rural customers, but prior to that time, the only rate on file with the Commission was the rate applicable to its Grant City customers.

III.

The contract entered into between the farm customers and the electric Light & Power Company is a matter over which the Commission has no control. Under the law, the applicant cannot charge any rate except the rate on file with the Commission. The contract between the parties could not fix a rate different from the rate on file, but since the applicant had only one rate on file for service furnished its customers prior to September 13, 1927, it naturally follows that it charged said customers the only rate it could legally charge prior to that date. On that date another schedule of rates became applicable to its rural customers and no rate thereafter could legally be charged these rural customers except the rural rate. All of the applicant's rural customers pay the rural rate prescribed by the schedule filed with the Commission, except the four farm customers heretofore mentioned. It is clearly a discrimination between customers to charge a part of those in any class a rate different from others of the same class. In other words, all of the applicant's rural customers must be charged the rural rate, and all of its city customers must be charged the city rate.

Paragraph 12 of § 10478, R. S. Missouri, 1919, contains among other provisions the following:

" . . . No corporation or municipi-

MISSOURI PUBLIC SERVICE COMMISSION

pality shall charge, demand, collect, or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation or municipality refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances."

Section 10541, R. S. Missouri, 1919, fixes a rather severe penalty for a violation of the orders of the Commission or failure to comply with provisions of the Constitution and laws of the state, etc. The first paragraph of said section is as follows:

"Any corporation, person, or public utility which violates or fails to comply with any provision of the Constitution of this state or of this or any other law, or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement, or any part or provision thereof, of the Commission in a case in which a penalty has not hereinbefore been provided for such corporation, person, or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense."

A public utility may contract as to the amount of service, time of service, and other matters, but it cannot, by contract, determine the rate to be

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charged for service. The contract between the parties in this case did not fix the legal rate, that matter being determined by the provisions of the schedule filed with the Public Service Commission.

Fifteen years have passed since the contract for the Grant City rate was entered into, and more than two years have passed since the filing of the schedule of rural rates with the Public Service Commission. It requires no order of this Commission to authorize the applicant to charge its customers the rates on file with the Commission. It is its duty to do so, and, as seen by the provisions of law above quoted, it is subject to a penalty if it fails to do so. There is a discrimination existing, however, between the applicant's rural customers and it is the duty of the Commission to require this discrimination to be removed.

There is no contention in this case that the rural rates are too high, the four farm customers basing their contention for the Grant City rate solely upon the contract entered into with the Company fifteen years ago. This, as heretofore stated, the Commission cannot consider.

In view of all of the facts developed in this case, the Commission is of the opinion that it should issue an order requiring the applicant to remove the discrimination between its rural customers by requiring the four customers in question to pay the rate prescribed for rural customers by the schedule on file with this Commission.

An order in accordance with the views herein expressed will therefore be issued.

Stahl, Chairman, Hutchison, Porter and Hull, Commissioners, concur.

STATE v. BERLIN STREET RAILWAY
NEW HAMPSHIRE SUPREME COURT

State
v.
Berlin Street Railway

(— N. H. —, — Atl. —.)

Constitutional law — Tax exemption — Unprofitable street railways.

A statute providing that a street railway failing to take in sufficient gross revenues for the payment of operating expenses should be exempt from taxation, was held to be constitutional.

[April 1, 1930.]

A PPEAL from an order of the Public Service Commission certifying that a street railway is entitled to tax exemption; order affirmed.

APPEARANCES: Ralph W. Davis, Attorney General, and Jennie Blanche Newhall, for the state; Jesse F. Libby and Harry G. Noyes, for the defendant.

MARBLE, J.: The state does not question the sufficiency of the evidence to sustain the findings of the Public Service Commission, but contends that the exemption granted the defendant is a special one and, therefore, invalid under the rule of *Eyers Woolen Co. v. Gilsum*, ante, —.

The statutory provisions authorizing the exemption (P. L. c. 69, §§ 28-31) are as follows:

"28. *Street Railways.* Any corporation owning or operating a street railway property within this state, which is incapable under proper management of earning sufficient money to pay its operating expenses and fixed charges, including taxes and ex-

cluding interest on its indebtedness, and to provide for the necessary repairs and maintenance of its properties and adequate reserves for depreciation thereof, may be exempted from the payment of taxes to the extent and subject to the limitations of the following sections.

"29. *Petition.* Any such corporation may apply to the Public Service Commission by written petition to determine the facts upon which such tax exemption depends and to certify such facts to the tax commission.

"30. *Hearing.* Thereupon the Public Service Commission, after such notice as it may consider proper to the tax commission and the attorney general, shall hear all parties desiring to be heard and shall make such further investigation, if any, as it may consider proper.

"31. *Certificate.* If the Public Service Commission shall, on or be-

NEW HAMPSHIRE SUPREME COURT

fore September 15th in any year, file with the tax commission a certificate that any such street railway property has failed during the preceding calendar year or later period of twelve months to earn the amounts specified in § 28, and that in the opinion of the Public Service Commission such property is unable during the current calendar or fiscal year to earn such amounts, then the property and estate within the state owned or operated by such corporation in its ordinary business as a street railway shall not be taxed the same year in which such certificate shall be filed."

Obviously, these provisions do not confer a gratuity upon a particular corporation, as was the case in *Eyers Woolen Co. v. Gilsum*, but apply generally to all street railways that are unable to earn operating expenses and fixed charges. "As to general exemptions, there is no limitation of the legislative power, save those applying to all classifications of property as taxable or non-taxable. If the distinction made is a reasonable one, in the sense that it may be deemed to be just, it is sufficient. Opinion of the Court (1830) 4 N. H. 565, 569, 570." Opinion of the Justices (1927) 82 N. H. 561, 573, 138 Atl. 284.

Under the broad terms of the stat-

ute authorizing abatement "for good cause shown" poverty and misfortune have long been regarded as just grounds of relief. *Briggs' Petition* (1854) 29 N. H. 547; *Cocheco Mfg. Co. v. Strafford* (1871) 51 N. H. 455, 459. And in the recent advisory opinion of this court (Opinion of the Justices) the fact that "the exempted party is too poor to pay" is recognized as a reasonable basis for general exemption under the provisions of a proposed income-tax law.

The constitutionality of the statute under consideration is, therefore, beyond doubt.

In this view of the case it is unnecessary to determine whether the exemption is not also sustainable as a valid exercise of the protective power of the state in aid of a public enterprise. *Perry v. Keene* (1876) 56 N. H. 514, 539, 540, 543; *Canaan v. Enfield Village Fire District* (1908) 74 N. H. 517, 547, 70 Atl. 250; *State v. Boston & M. Railroad* (1909) 75 N. H. 327, 337, 74 Atl. 542.

Appeal dismissed.

All concur.

Note.—A similar disposition was made in the case of *State v. Nashua Street Railway*, April 1, 1930.

E. P. Paxson et al.

v.

Philadelphia Suburban Counties Gas
& Electric Company

[Complaint Docket No. 8209.]

Reparation — Commission jurisdiction — Refund of customer's contribution.

1. The Commission declined to take jurisdiction of a complaint by electric consumers against a utility for alleged failure to refund money paid by them towards the erection of service lines, in view of an outstanding contract existing between certain consumers and the utility, p. 122.

Discrimination — Contributions of consumers to secure service — Electricity.

2. The Commission refused to order a refund, on alleged grounds of discrimination, of voluntary contributions made by certain customers towards the expense of service extension, and ruled that such contributions were given to the company and, therefore, no ground existed for a complaint that subsequently the utility did not grant such consumers a lower rate notwithstanding the acquisition of new customers in the territory affected, p. 122.

[April 1, 1930.]

COMPLAINT by certain electric consumers against the failure of an electrical utility to refund certain money; dismissed.

By the COMMISSION: This complaint alleges failure on the part of the Philadelphia Suburban Counties Gas & Electric Company, respondent, now by merger, the Philadelphia Electric Company, to refund to complainants moneys subscribed and paid by them toward the erection of an electric line to serve their residences in Solebury, Bucks county. Complainants aver an oral contract entered into in 1922 by the Bucks County Electric Company, respondent's predecessor, whereby for consideration of the several subscriptions by complainants the electric company agreed

to erect the line and to pay to the subscribers a proportional part of \$50 for each additional consumer taking current therefrom and to allow a discount of 20 per cent upon the current consumed by the subscribers, until the amounts contributed for erecting the line were repaid. The complaint also alleges that since completion, twenty-three additional consumers have contracted for service from the line in question, none of whom has been required to make any payment toward the cost of the extension.

Respondent has filed a motion to dismiss, challenging the jurisdiction

PENNSYLVANIA PUBLIC SERVICE COMMISSION

of the Commission in the premises. It also submitted written agreements, made part of the record by stipulation, between some of the complainants and respondent's predecessor covering the erection of this line, which agreements antedated the oral contracts pleaded by complainants. In the written contracts there is no obligation on the part of the company to repay all or any part of the subscriptions, once the line is constructed and service furnished.

The jurisdictional question has been submitted on briefs and oral argument and is now before the Commission for disposition.

For the present purpose the averments of the complaint will be deemed admitted, the petition to dismiss being in the nature of a demurrer. This being so, no question arises as to the effect of the prior written contracts or whether the subsequent oral contracts are ineffective, as in variation or denial of the former.

We start, therefore, with the proposition that complainants have alleged a valid and subsisting agreement imposing certain obligations upon respondent's predecessor by way of making refunds on account of prior subscriptions toward the cost of the electric line. No specific allegation of discrimination is made, but this question was raised at the argument. It is contended complainants are prejudiced to the extent that others taking service from the same line have not been required to contribute to the cost of the extension.

Two questions are presented: (1) the jurisdiction of the Commission to enforce the terms of a contract between a consumer and a public service

company; (2) whether discrimination exists under the facts.

[1] The gravamen of the complaint is that the company is indebted to the complainant in a sum certain under a contract. The failure and neglect of respondent to perform the conditions of the alleged contract is specifically made the ground of the complaint. No question of the reasonableness of the rates or adequacy of service, which, generally speaking, are the fundamentals of the Commission's power to act, is involved. If respondent were not a public service company the complaint would constitute a statement of claim in assumpsit. The Public Service Company Law has not divested the courts of the commonwealth of their jurisdiction to adjudicate contractual rights. If a valid contract exists between the parties complainants have sought the wrong forum for redress. In our judgment, this case falls within the ruling of this Commission in *Patterson v. Philadelphia Suburban Gas & E. Co.* (1926) 7 Pa. P. S. C. 731, P.U.R.1926D, 1, in which the facts are strikingly similar to those here pleaded. There the company agreed to make a refund upon the amount contributed by complainant to the cost of the extension based upon new consumers connecting with the line. The complaint was dismissed on the ground of lack of jurisdiction.

[2] As to the contention of discrimination, the Commission finds nothing averred in the complaint to justify such an inquiry. There is no averment that consumers on the line other than complainants are paying the same rates, and, although this

PAXSON v. PHILADELPHIA SUBURBAN COUNTIES GAS & E. CO.

may be taken as true, the facts pleaded by complainants do not show that they are entitled to any lower rate. In the first place, complainants were under no compulsion to contribute to the extension,—their having done so was entirely voluntary or by virtue of a contract; and in neither case are they entitled as a matter of right to a preferential rate. If the contribution was a voluntary one, it is a gift to the company and no ground exists for complaint that subsequently respondent did not grant them a lower rate. Had it done so, the question might well arise whether other consumers enjoying a similar service would not have been discriminated against. If the contributions were made under a contract whereby the company obligated itself to make refunds, complainants have their remedy in the courts as above determined.

The Commission, therefore, concludes that respondent's petition to dismiss must prevail. The complaint will be dismissed for lack of jurisdiction.

ORDER

This matter being before the Public Service Commission of the commonwealth of Pennsylvania, upon complaint and motion to dismiss and the parties having been heard in written and oral argument, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby approved and made part hereof;

Now, to-wit, April 1, 1930, it is ordered: That the complaint be and is hereby dismissed.

PENNSYLVANIA PUBLIC SERVICE COMMISSION

Re Safe Harbor Water Power Corporation

[Application Docket No. 21579.]

Commissions — Jurisdiction — Highway over dam — Hydroelectric utility.

In approving construction of a hydroelectric dam across a river, the Commission has no jurisdiction to determine whether or not a roadway across the top of the dam should be included in the plan.

[March 31, 1930.]

APPPLICATION by a corporation for the approval of the beginning of the exercise of rights and privileges in connection with a hydroelectric development; granted.

By the COMMISSION: Safe Harbor Water Power Corporation is a corporation of the state of Pennsylvania, formed on January 6, 1930, by the merger and consolidation of South Harbor Water Power Corporation.

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PENNSYLVANIA PUBLIC SERVICE COMMISSION

ration (incorporated February 19, 1929), and Chanceford Water Power Corporation (incorporated February 19, 1929), with corporate purpose—the supply, storage, and transportation of water and water power for commercial and manufacturing purposes in the township of manor, Lancaster county, Pennsylvania, and the township of Chanceford, York county, Pennsylvania—and possessing the rights and powers conferred upon water and water power companies by the Act of Assembly, approved the 2nd day of July, 1895, P. L. 425, as amended by the Act of the 7th day of May, 1929, P. L. 1632.

The present proceeding is for the Commission's requisite approval under the provisions of Article III, § 2 (b), of the Public Service Company Law, of the beginning of the exercise by Safe Harbor Water Power Corporation of its rights, powers, and privileges.

Formal protests were filed by Edison Electric Company, a corporation of the state of Pennsylvania, engaged in furnishing electric energy to the public in Manor township, Lancaster county, and other municipalities of said county, and by Edison Light & Power Company, a corporation of the state of Pennsylvania, engaged in furnishing electric energy to the public in various municipalities of York county, including the township of Chanceford. These protestants allege that the sale by Safe Harbor Water Power Corporation of electric energy generated at its proposed plant in any manner which would permit such energy or electric power to be delivered and used in their territory

without the consent of the Public Service Commission first had and obtained would be prejudicial to their rights and detrimental to the service being furnished by them. These protests have been satisfied by stipulation filed of record.

Philadelphia Electric Company and Philadelphia Electric Power Company were represented at the hearing by counsel. A stipulation filed by the applicant company satisfied said companies and no protest or objection was entered of record by them.

Certain citizens of Lancaster and York counties residing in the vicinity of the Safe Harbor project appeared at the first hearing and informally stated that their interest in the matter related to the construction of the dam in a manner to provide a roadway for vehicular and pedestrian traffic across the Susquehanna river forming a connecting link between highways on the York and Lancaster sides of the river to be constructed at some future time. The examiner conducting the hearing informed these gentlemen that in his opinion the Commission had no jurisdiction in the present proceeding to compel the applicant corporation to provide a roadway or bridge across the river, but would use its good offices in the matter of such roadway. Conferences were held with representatives of the company who took the position that construction of the dam with a highway crossing was not necessary at this time; that the cost of providing the roadway on the dam—approximately \$1,000,000, would not be justified, but that the company was willing to grant to responsible parties a right of way across the dam for the construction

RE SAFE HARBOR WATER POWER CORP.

of a bridge or highway crossing at any time in the future.

At the second hearing the citizens of York and Lancaster counties were represented by counsel. No formal protest was filed but a motion, however, was made to call witnesses to prove the benefits and advantages to the public if a highway road was provided on the dam. The examiner ruled that it would serve no good purpose to extend the record to include testimony on a matter which was not subject to the jurisdiction of the Commission, but granted the counsel for the citizens the right to file brief on the jurisdictional question with the understanding that if the Commission determined it had jurisdiction to grant further hearing. The ruling of the examiner is sustained. The Commission has carefully examined briefs filed on the question and is of the opinion that the general provisions of the Public Service Company Law referred to by counsel are not controlling and without a definite and specific provision conferring such jurisdiction it is without authority.

The legislature of Pennsylvania has conferred upon the Water Supply Commission (now Water and Power Resources Board) authority to regulate the construction of dams and the development of the water power resources of the state. Similar authority and jurisdiction is conferred by Federal statute upon the Federal Power Commission. This jurisdictional question has been decided by the supreme court of Pennsylvania in case *Pennsylvania Power Co. v. Public Service Commission* (1918) 261 Pa. 211, 218, 104 Atl. 605: "It (Public Service Commission) is not invested

with authority to regulate the erection of dams or the development of the water power resources of the state. That is a subject over which the Water Supply Commission has jurisdiction. . . . The authority of the Water Supply Commission to impose regulations and conditions to be observed by a corporation proposing to develop the water power of a stream is broad as shown by the language of the statute. . . . It has undoubted authority to attach any of the conditions necessary to carry out the purposes of the legislation on the subject with a view to the protection of the rights of the public and of individuals or companies having vested interests."

It appears from the record that the Safe Harbor Water Power Corporation will construct a solid concrete gravity type dam crossing the Susquehanna river at a point about one-quarter of a mile upstream from the mouth of the Conestoga Creek, about eight miles above Holtwood, Pennsylvania, and about 17 miles above the Pennsylvania-Maryland state line, with total length of 3,635 feet of which 1818 feet will be bulk-head or non-flow sections and 1817 feet will be stowaway sections; the reservoir formed by the dam will extend upstream for about 10 miles and that its widest point will be $1\frac{1}{4}$ miles wide; and a power house located on the Lancaster county side of the river with total length when completed of 1,048 feet and width of 157 feet, with initial installation of six main generating units having a total generator capacity of 168,000 kilowatts. The estimated cost of the project is \$30,000,000, which will be financed by the sale of the company's stock or other securi-

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ties. The corporate and financial plans including preliminary costs of the project have been examined by the Commission's technical staff and in general conform to the governing ruling and policy of the Commission. The project is feasible and will conserve the natural resources of the state and supplement the present output of the hydro-electric plant of the Pennsylvania Water & Power Com-

pany, the present peak demand of which is more than two and one-half times the average high-flow capacity of the plant.

The Commission finds and determines that the approval of the construction, subject to the stipulations filed of record, is necessary and proper for the service, accommodation, and convenience of the public.

A certificate will issue accordingly.

ALABAMA SUPREME COURT

John A. Wiegand, Doing Business as Delta Electric Shop

v.

Alabama Power Company

[7 Div. 928.]

(— Ala. —, 127 So. 206.)

Service — Regulations as to wiring — Rules of utility.

1. In the absence of definite action by the Commission setting reasonable standards for wiring and electrical installation, there is no statutory prohibition against the imposition of reasonable rules and regulations on the same subject by the utility itself, p. 129.

Service — Refusal to serve — Improper wiring.

2. The refusal of an electric utility to render service to premises where reasonable rules promulgated by the utility as to safe wiring had not been complied with was held to be justified, p. 129.

Service — Rules as to safe electrical installation.

3. A rule of an electrical utility requiring a certain type of switch on electrical installations at premises served by it, in the interest of safety and prevention of fire hazards, was held to be reasonable, notwithstanding the fact that other types not approved by it were approved by fire underwriters, p. 130.

[March 27, 1930.]

A PPEAL by an electrical contractor from a decree dismissing his complaint against the failure of an electric utility to connect its service to premises wired by him; affirmed.

WIEGAND v. ALABAMA POWER CO.

APPEARANCES: Bidd, Field, Field & Woolf, of Anniston, for appellant; Knox, Acker, Sterne & Liles, of Anniston, and Martin, Thompson, Turner & McWhorter, of Birmingham, for appellee.

GARDNER, J.: Complainant Wiegand, an electrical contractor of Anniston, Alabama, completed the wiring of some houses for two of his customers, to which the defendant Alabama Power Company refused to connect its electric current because of complainant's refusal to install a certain type of switch considered by defendant more advantageous and safe than the old. Thereupon Wiegand filed the bill in this case seeking a mandatory injunction against the power company requiring such connection. From a decree dissolving the temporary injunction theretofore issued, and dismissing the bill, complainant prosecutes this appeal.

The bill charges that defendant's demand is illegal, arbitrary, and unreasonable and violative of complainant's right and those of the public, operates to set up a monopoly, and is in restraint of trade; deprives complainant of the right to contract according to law as well as free competition in the contracting business. The bill further shows the duty defendant owes to complainant and the public, and avers that, unless relief is granted, complainant's business will be destroyed. The equity of a bill of this character is well established, and is not here controverted. *Tallassee Oil & Fertilizer Co. v. Holloway* (1917) 200 Ala. 492, 76 So. 434, L.R.A. 1918A 280; *Hardie-Tynes Mfg. Co. v. Cruise* (1914) 189 Ala. 66, 66 So. P.U.R.1930C.

657; *Sparks v. McCreary* (1908) 156 Ala. 382, 47 So. 332, 22 L.R.A. (N.S.) 1224; *Mobile & O. R. Co. v. Zimmern* (1921) 206 Ala. 37, 89 So. 475, 16 A.L.R. 1352; *Walker v. Birmingham* (1927) 216 Ala. 206, 112 So. 823; *Montgomery v. Greene* (1913) 180 Ala. 322, 60 So. 900.

It was established without dispute that the type of switch sold and installed by complainant for his customers met the requirements of the Southeastern Underwriters' Association, with which the city of Anniston was satisfied, and that the city inspector issued his certificate therefor.

Defendant insists these were minimum requirements only, and not intended to preclude a public utility from adopting more improved and progressive instrumentalities, and that in fact the adoption and use of such improvements were contemplated in Rule 2 of General Order No. 14 of the Alabama Public Service Commission reading as follows:

"(a) The entire plant of each utility shall be constructed and installed in accordance with accepted good practice.

"(b) Each utility shall, so far as practicable, operate and maintain its entire plant and system in such condition as will enable it to furnish safe, adequate, and continuous service within its hours of operation."

Defendant further insists that its requirement of the new type of switch is not only in keeping with the foregoing order, but also in compliance with its general duty to its employees and to the public; that the new type of switch is recommended by the National Electric Safety Code issued by the United States Bureau of Stand-

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ards of the Department of Commerce, which code is the best and most widely known and accepted code having to do with the manner of using electric energy with safety to life and property, while the Underwriters' Association is primarily interested in the protection of property only. Defendant adopted a rule requiring this new type of switch for all contractors, and gave due notice thereof to complainant, and discussed with complainant the advantage of the new type over the old. Complainant knew defendant's rule before making this contract. The new type of switch is readily obtainable in the open market, and put out by a number of manufacturers.

Defendant does not deal in these switches, and has no financial interest therein, but offered to give complainant credit at invoice prices of all the old type switches he had on hand. The new switch is from \$3.50 to \$4 more costly than the old. The contractor sells the switch to the customer and makes a profit. Complainant's profit on the new would exceed that which he made on the old. The new type is now required in a large number of the principal cities of the country. All other contractors of Anniston have complied with the rule, and the new type switch, which has been on the market three years, is growing in general use. The evidence of one witness as to this feature is as follows: "That the type of entrance switch listed in said 'Service Rules and Regulations' is being generally advocated by practically all progressive and up-to-date utility companies, as well as electrical engineers, and is already in use by a large number of public utility companies throughout

the United States and has been so used for the past three or four years."

As we read and understand the record, the foregoing matters appear without substantial conflict in the proof. Likewise upon the question as to the difference between the two types of switches the evidence is in substantial accord.

The new is referred to as the "accessible fuse type switch," which does not require the opening of the door to the switch box to replace a blown fuse, as is necessary in the old type. In the new type a lever operates on the outside of the switch box which blockades a sliding door on the front covering up the fuses and rendering them "dead" and void of danger. This renders fire less likely. Its chief virtue, however, appears from the evidence to be better protection to human life. In the new type there is no danger of a person receiving a shock from replacement of a fuse, while there are possibilities of coming in contact with "live parts" in the old.

The evidence is further to the effect that the theft of electric current has become a matter of serious concern to public utilities, and another advantage of the new type over the old appears to be the fact that the new switch is sealed, and one cannot "jump the current," without breaking the seal, and, if broken, this serves at once as notice that investigation should be had. Thus the theft of current is rendered more readily detected. The sealed switch also serves to give notice to the owner that there is no necessity he go into the switch, and that, if any trouble exists, it should be corrected by an electrician.

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Further detail discussion as to these advantages need not be indulged. The history of the various advance steps in switches was fully gone into, and numerous witnesses testified as to the advantages of the new over the old type. These witnesses were not contradicted save by complainant in a very general way, and who admitted he had made no particular investigation. Indeed, on cross-examination he confessed to some superiority of the new over the old, but thought it "very little." These witnesses were examined orally before the chancellor, with demonstrations before him of these two types of switches, and their differentiating features. His finding of fact is to be considered as the verdict of a jury, and not to be disturbed, unless found to be plainly and palpably wrong. *Curb v. Grantham* (1924) 212 Ala. 395, 102 So. 619.

The chancellor found, as stated in the opinion accompanying his decree, that the enforcement of defendant's rule as to the new type of switch will work no damage to complainant's business, that no restraint of trade is made to appear, and that said new type is available in the general market from several electric jobbers in that territory. The chancellor further concluded that the rule promulgated was a reasonable requirement, saying:

"3rd. That the regulation complained of in complainant's bill is a rule promulgated by the respondent as a precaution, or safety measure, for the protection of both life and property; that said regulation is an advancement in the science of distributing electrical energy, and its effect will be to protect life and property.

"4th. That the regulation requiring the use of the accessible fuse type switch as a condition precedent to the furnishing of electric service to a customer in the city of Anniston is a reasonable regulation, and that the respondent has the right to promulgate and enforce such a rule or regulation."

We are not persuaded the finding of the trial court on the facts is plainly wrong. On the contrary, we are of the opinion his conclusion is fully and amply supported by the evidence. The defendant, as a public service corporation, is obligated, independently of any statute, to treat all members of the public that it has held itself out as serving fairly and without discrimination. *Birmingham R. Light & P. Co. v. Littleton* (1917) 201 Ala. 141, 77 So. 565, 570; *Alabama Water Co. v. Knowles* (1929) — Ala. —, P.U.R.1930B, 193, 124 So. 96; *Tallassee Oil & Fertilizer Co. v. Holloway* (1917) 200 Ala. 492, 76 So. 434, L.R.A.1918A, 280.

[1, 2] But, as a condition precedent to such service, the applicant must conform to reasonable rules and regulations imposed. This limitation is recognized by all the authorities, and was given application by this court in *Birmingham R. Light & P. Co. v. Littleton*, *supra*, at p. 146 of 201 Ala. wherein it is said: "Service must be asked at a proper time, at a proper place, in proper form, and in a proper manner. That is to say, the applicant must submit to such reasonable conditions as the public service company sees fit to impose." The very question here considered, that is, the requirement of a certain type of switch, was fully considered in an exhaustive

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opinion by the Vermont supreme court in the case of *Hawkins v. Vermont Hydroelectric Corp.* (1924) 98 Vt. 176, P.U.R.1925C, 128, 126 Atl. 517, 37 A.L.R. 1359, which sustains in every respect the decree here rendered, as do also the authorities cited in the note thereto. The case of *State ex rel. Kansas City Power & Light Co. v. Public Service Commission* (1925) 310 Mo. 313, P.U.R.1926A, 783, 275 S. W. 940, from the supreme court of Missouri, is likewise directly in point, and fully supports the decree rendered. See, also, *Tismer v. New York Edison Co.* (1915) 170 App. Div. 647, P.U.R.1916A, 949, 156 N. Y. Supp. 28. This right of the public service corporation to impose reasonable rules and regulations as a condition precedent to rendition of service is recognized in this state by statute (§ 7202, Code 1923), though the authorities generally gave application thereto independently of any statutory enactment. Counsel for complainant in brief recognize this statute, and express the view the case "hinges upon the question as to whether the regulation adopted . . . is a reasonable one." There is suggestion in brief, however, to the effect no rule or regulation in the conduct of its business may be imposed by such public service corporation without first the approval of the Public Service Commission.

We have read the cited statutes, §§ 9740 to 9842, but do not construe them as indicating any such limitation upon the express authority recognized in § 7202, above noted. These statutory provisions disclose the power and right of the Public Service Commission to enact rules and regu-

lations binding on such public utilities, and, when so enacted, they become law made rules as held in *Alabama Water Co. v. Knowles*, *supra*. But, in the absence of such action on the part of the Commission, we find nothing in the statute precluding such utilities from imposing rules and regulations in the conduct of its business, provided, of course, they are reasonable and subject always to inquiry in that respect. We think § 7202, *supra*, is plainly to that effect, and the other statute indicates no further limitation thereof.

There is some suggestion also that the rule adopted by the Commission in 1920 concerning inside wiring is sufficient to embrace the question here considered, but we cannot read the rule as touching the question of type of switch to be used or as intended to affect that question whatever. That rule was merely intended as some form of protection to the owner by way of competent inspection for inside wiring and no more.

[3] Complainant further insists that, as his type of switch met the requirements of the Underwriters' Association, with which the city and its inspector were likewise satisfied, that was the conclusion of the matter, and further inquiry as to the reasonableness of the rule imposed was unnecessary. But the Underwriters' Association was interested primarily in protection of property from fire, likewise of interest from the city's standpoint. Very clearly, this does not preclude the utility from the exercise of its right and duty to the public to adopt improved methods or instrumentalities intended for the better protection not only of property

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but of human life as well. It appears, therefore, that after all the case hinges upon the reasonableness of the regulation imposed, which question has been determined favorably to defendant by the chancellor following full hearing on oral proof amply supporting his finding.

We find no reason to disturb his conclusion. The decree on motion to dissolve is separate from the final decree, a short lapse of time intervening, but both hearings were upon the same evidence heard in the same manner. It is clear, therefore, that in the instant case a conclusion of fact that would sustain one decree would likewise sustain the other, and separate treatment is deemed unnecessary. We may add, however, that some authorities noted as denying a consideration of defensive matter on hearing of motions to dissolve

an injunction have been superseded by statute. Section 8311, Code 1923.

The order of the chancellor requiring increased injunction bond is reviewable on the appeal from final decree, and properly here assigned as error. The bond, on motion of defendant, was increased from \$300 to \$500. Defendant had alleged that the expense of the suit including attorneys' fees incurred would exceed \$1,000. The motion was sworn to, and no contradictory proof was offered. Under these circumstances, therefore, this court would not be justified in disturbing the order made.

It results that the decree of the court below will be here affirmed.

Affirmed.

Anderson, C. J., and Bouldin and Brown, JJ., concur.

UNITED STATES DISTRICT COURT

Southern Motorways, Incorporated

v.

James A. Perry et al.

[No. 569.]

(— F. (2d) —.)

Public utilities — Status of bus carrier.

1. A bus carrier operating under a charter from the state for the transportation of passengers without discrimination, making contracts for stations and station agents, contending before the Public Service Commission for more and better schedules, and referring to other bus lines as competitors, are engaged in a business affected with public interest and subject to public regulation, notwithstanding the fact that it is unaided by the power of eminent domain and is in many respects more limited than railroads, p. 134.

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Automobiles — Extent of valid regulation.

2. Bus carriers operating in intrastate commerce and subject to public regulation by the state through its agency, the Public Service Commission, may be restricted as to the kind and number of vehicles used on the highways with regard to safety to the pavement, to pedestrians, and to other travelers, and may be limited as to the use of highways even to the extent of prohibition by a requirement of a certificate of public convenience and necessity as a condition precedent to operations, p. 135.

Automobiles — Validity of taxation — Certificate of convenience and necessity.

3. The fees required by a state from a bus carrier for a certificate of convenience and necessity and for a license of each vehicle used in such business are in the nature of a tax justified in reasonable amounts exacted as recompense for the special use of the highways for a profit, p. 136.

Certificates of convenience and necessity — Revocation.

4. Certificates of convenience and necessity can be revoked when the holder thereof fails to observe lawful regulations, or if circumstances arise rendering it detrimental to the public to continue same, p. 137.

Constitutional law — Revocation of certificate — Right of hearing.

5. No constitutional right of a bus carrier is denied or affected by a statute providing for the revocation of certificates of convenience and necessity for good cause shown, where the statute permits revocation only after hearing, p. 137.

Constitutional law — Estoppel to attack validity of statute.

6. A utility operator who entirely repudiates a statute providing for certificates of convenience and necessity, although previously having endeavored to comply with it, may assail the same as unconstitutional where it is subsequently used wholly to his disadvantage, p. 137.

[March 24, 1930.]

SUIT by a motor carrier attacking the constitutionality of a statute regulating motor carriers; statute held constitutional and injunction refused.

SIBLEY, District Judge: This bill challenges the constitutional validity of an act of the Georgia legislature approved August 29, 1929, which defines and regulates "motor carriers" upon the public highways, and subjects them to the jurisdiction and further regulation of the Georgia Public Service Commission. The complainant is a Georgia corporation, whose charter was granted September 12, 1929, wherein the business authorized to be conducted is "operating

automobiles, motor busses, and coaches for hire for the transportation of passengers and freight, and in connection therewith to have passenger and freight depots, warehouses, etc." On September 30, 1929, complainant applied to the Georgia Public Service Commission for the issuance of a "certificate of public convenience and necessity," required by the act, and asked to be allowed to establish rates and schedules between Atlanta and Macon, Macon and Sa-

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vannah, Macon and Waycross, all in Georgia, and from Atlanta to Chattanooga, in Tennessee.

Complaint Alleges Act Is Unconstitutional

The application concludes with the statement that applicant is familiar with the above-mentioned act and the rules and regulations made in pursuance of it by the Commission, and a promise to comply with them. The Commission granted a certificate, but refused permission to operate schedules between Atlanta and Chattanooga. On November 26, 1929, schedules between Macon and Atlanta were fixed for complainant and for two competing companies, to wit: Greyhound Lines, Incorporated, and Colonial Stages, Incorporated. About December 9, 1929, complainant applied to the Commission to establish additional schedules between Macon and Atlanta, which was denied.

On March 3, 1930, the Commission cited complainant to show cause on March 12, 1930, why its certificate should not be revoked for failure to observe schedules, for failure to run regularly, and for its failure to give the service which complainant had proposed. The complainant then filed this bill asking an injunction against the revocation of its certificate and against the enforcement of the Commission's order restricting its schedules, on the ground that the act of August 29, 1929, is in conflict with provisions of the Constitution of the United States.

This act has not yet been construed by the supreme court of Georgia. Section 22 provides that each section and part of it is independent and that

the invalidity of any part is not to affect the remainder. The legislature, therefore, intended to go as far as possible in the regulations proposed, but to abandon none because some might prove invalid. We accordingly will attempt no general construction of the act, and will confine this opinion to objections which this complainant is entitled to raise and has raised by the facts of this case. These we conceive to be: (1) Can the state of Georgia demand of complainant a certificate of public convenience and necessity as a condition of its carrying on its business; (2) can it demand a fee therefor, and require annual license fees on each vehicle; (3) can it fix and limit complainant's schedules; (4) can it revoke the certificate for noncompliance, thereby forfeiting complainant's business good will.

State Control Incident To Use of Highways

The right of the state to regulate is drawn from two distinct sources, to wit: The nature of the business done and the use of the public highways. Certain businesses, because of their public interest, are subject to regulation, although their owners exercise no special franchises, and use in them only their own property. *Wolff Packing Co. v. Court of Industrial Relations* (1923) 262 U. S. 522, 67 L. ed. 1103, P.U.R.1923D, 746, 43 Sup. Ct. Rep. 630, 27 A.L.R. 1280. Such a business is the common carriage of passengers or freight. Again, when the public highways are made the place of business, a right to regulate in the interest of the safety and convenience of the other users

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of the highways and of the preservation of the highways themselves, arises independently of the nature of the business done.

Of the regulations proposed in the Georgia statute some seem referable to the one source of power and some to the other, and some to both. The obstacles likely to be encountered in the Federal Constitution are in conflict with the interstate commerce and post roads clauses; arbitrary classification, contrary to the equal protection clause of the Fourteenth Amendment; and unreasonable exactions or requirements amounting to a deprivation of liberty or property contrary to the due process clause. The present bill makes no reference to the commerce and post roads clauses. It is not alleged that post roads are involved.

The commerce between Atlanta and Chattanooga was interstate, but it was abandoned on November 13, 1929, and is not now proposed to be resumed. The order refusing permission to carry it on is not exhibited, nor in evidence, nor are the reasons for it set forth, nor is any injunction against it prayed. We treat the complainant as carrying on intrastate commerce only. The bill affirms that the complainant is only a private carrier. The answer avers the contrary.

Transportation for Hire Not Ordinary Use of Streets

[1] We think the evidence, while meagre on the point, shows the business to be the common carriage of passengers. The powers granted in the charter look to that sort of business. The contracts made for stations and station agents point the same way.

P.U.R.1930C.

The contending for more and better schedules, and the reference to other bus lines as competitors, tend to show that the complainant was running such passenger busses as are familiar now on all the roads. These cannot, of course, carry everybody, but they will carry anybody whom they can accommodate and who has the price.

Though unaided by eminent domain, and though more limited than the railroads in many respects, this business is affected with a public interest and subject to public regulation. *Terminal Taxicab Co. v. District of Columbia* (1916) 241 U. S. 252, 60 L. ed. 984, P.U.R.1916D, 972, 36 Sup. Ct. Rep. 583, Ann. Cas. 1916D, 765. In Georgia the highways, built and maintained by the public property, and (subject to such interest as the United States may have in them as post roads) are subject to state control. "The use of streets and highways is not absolute and unrestricted. Such use is subject to reasonable regulation by the public. . . . From the premise that streets belong to the public, the conclusion is drawn that individuals have the right to use the streets for the purpose of transporting passengers for hire. This conclusion does not properly follow from premise. . . . The ordinary use of the streets, as we have seen, is for travel, and to this may be added transportation of goods by their owners to and from their residences or places of business. Transportation of travelers or goods for hire does not fall within the ordinary use of the streets. Their use for purposes of gain is special and extraordinary, and may be prohibited or conditioned as the legislature or mu-

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nicipality sees proper. The conduct of the business of a carrier for hire over the streets of a city is a mere privilege, and not a natural or inherent right of the individual conducting such business. Being a privilege, it can be given or withheld. *Schlesinger v. Atlanta* (1925) 161 Ga. 148, 129 S. E. 861.

Need for Regulation By State Is Shown

[2] The law thus announced was supported by reasoning and authorities applicable also to highways. To the same effect the Supreme Court of the United States speaks: "The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and generally, at least, may be prohibited or conditioned as the legislature deems proper." *Packard v. Banton* (1924) 264 U. S. 140, 144, 68 L. ed. 596, 44 Sup. Ct. Rep. 257. The complainant is, therefore, both engaged in a business that is regulable and doing that business on the highways by a privilege which may by general law and that of Georgia be conditioned or withheld.

The requirement of a certificate of public necessity and convenience is justifiable. Carriers for hire, such as the complainant, whether in all respects common carriers or not, may be put in a legislative class for regulation. It is common knowledge that the expensively improved modern highways, affording a perfect track, untaxed, built and kept up by the public, have been made the theater of a passenger and freight carriage business that has greatly modified the

traffic system of the country, and has brought about larger, heavier, and swifter vehicles that tend greatly to damage the pavements, and on narrow ones becomes a source of great inconvenience and danger.

Profits depend on filling the vehicles, and there is constant temptation to make quick schedules and reach stations ahead of competitors. Regulation and restriction is imperative. The legislature, through its agency, the Public Service Commission, may determine what sort and how many such vehicles can be used on the roads with safety to the pavement, to their passengers, and to other travelers, and may prefer the ordinary use of the highway to the new use of it for extensive carriage business. It may limit the use of its highways for this purpose just as it has always limited the use of its power of eminent domain, so as to avoid needless and perhaps disastrous multiplication of railroads.

Actions Constitute Fair Classification

The power to select, limit, and prohibit uses of the highways by carriers for hire, which is implied in the requirement of a certificate of public convenience and necessity, is justified both as a regulation of the business and as a regulation for the protection and safety of the highways. There is thereby no unequal protection of law, but a reasonable classification. Complainant does not show that it is likely to be deprived of any liberty or property without due process of law, but only of a privilege on a highway to which it has no constitutional or statutory right. Reliance as being to the contrary is placed upon *Michigan*

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Pub. Utilities Commission v. Duke (1925) 266 U. S. 570, 69 L. ed. 445, P.U.R.1925C, 231, 45 Sup. Ct. Rep. 191, 36 A.L.R. 1105, and Frost v. California R. Commission (1926) 271 U. S. 583, 70 L. ed. 1101, P.U.R. 1926D, 483, 46 Sup. Ct. Rep. 605, 47 A.L.R. 457.

In the former Duke was a private carrier of automobile bodies from one state to another, hauling for three patrons only. The Michigan act which made all persons carrying for hire on the highway become common carriers with regulation of rates and requirement of certificate of public necessity, was held invalid as to him because a burden on interstate commerce. It was also said that to convert a private carrier into a public one against his will was contrary to the due process clause of the Fourteenth Amendment, in that it deprived him of his property without due process of law by subjecting it to the use of the public and preventing him from carrying out his contracts of private carriage.

In the Frost Case, *supra*, interstate commerce was not involved, but again the carrier was engaged in hauling only citrus fruits for certain producers. It was assumed that the use of the highway by a private carrier for hire was a mere privilege that could be denied to him, but the California act, which compelled him to get a certificate of public necessity and to become a common carrier, having already been held by the state supreme court not to be a regulation of the use of the highway, but of the business of the private carrier, the act so construed was held contrary to the Fourteenth Amendment.

P.U.R.1930C.

No Record of Improper Use of Power Present

The reason was that the private carrier could not be directly forced, against his will, to dedicate his vehicles to the public use and assume the liabilities of a common carrier, nor could this unconstitutional end be attained indirectly by the duress of denying him the use of the roads for the sole purpose of compelling his assent. In neither of these cases was it held that the private carrier has any property right in the highway or in its use, or that regulation of its use would necessarily be unconstitutional. The present complainant is not engaged in interstate commerce and cannot raise any question concerning that. Hendrick v. Maryland (1915) 235 U. S. 610, 59 L. ed. 385, 35 Sup. Ct. Rep. 140. The supreme court of Georgia has not held the Georgia act to be solely a regulation of business and not also a regulation of the use of the highways. But above all the complainant is not being forced to dedicate its property to public use, but has voluntarily engaged in this business, and its only wish and purpose now is to be allowed to do more of it.

[3] The fees for the certificate and for the license of each vehicle are in the nature of a tax, justified in the reasonable amounts exacted, as recompense for the special use, for the purpose of gain, of the highways. Hendrick v. Maryland, *supra*.

This brings us to the regulation by restriction of the schedules. Such a regulation appears to have a double source, partly for the convenience of the public in having certain and regularly spaced schedules and partly in the interest of safety on the road in

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not having too many or too speedy ones. No serious question of the power to regulate in these respects seems possible, unless the regulation be arbitrarily done. Complainant here asserts improper and discriminatory regulation by the Commission, but it was done after hearing and the record of the evidence produced is not presented to us.

Injunction Refused On Case Presented

[4, 5] The Commission asserts that the road is the only paved one from Atlanta to Macon, that it is narrow and the most heavily traveled road in Georgia, and that there are 19 round trip motor busses now using it daily. Evidently this is more than the traffic demands, as the complainant cannot profitably fill its vehicles. The hours assigned complainant do not seem disadvantageous on their face and no proof is offered that they are so in fact. The greater number of schedules given competing lines is explained by saying that the number of local schedules given each is equal, the excess schedules being interstate through schedules. It is not apparent that arbitrary discrimination has been practiced against complainant.

From what has been said it follows that the certificate of public necessity and convenience can be revoked if the complainant fails to observe lawful regulations, or if circumstances arise

rendering it detrimental to the public to continue it. The statute permits such revocation only after hearing. Such a hearing is now imminent before the Commission. There is no reason to doubt that it will be fairly conducted and result in a just order. No constitutional right of the complainant is to be denied to prevent which this court should act.

[6] It has been urged that the complainant has applied for and obtained a certificate under the act and conducted business under it, and expressly agreed to regulation by the act and the Commission, and is, therefore, estopped to attack the regulation. One cannot, in the same proceeding, both assail and rely upon a statute, nor can he deny its validity while clinging to benefits under it. But when he entirely repudiates it, although previously having endeavored to comply, and the statute is being used wholly to his present disadvantage, it may be assailed as unconstitutional. *Buck v. Kuykendall* (1925) 267 U. S. 307, 69 L. ed. 623, P.U.R.1925C, 483, 45 Sup. Ct. Rep. 324, 38 A.L.R. 286. It would be unfortunate practically to have some of these carriers regulated through estoppel and others unregulated because of a successful attack upon the regulations.

Having considered the questions raised on their merits we conclude that an interlocutory injunction should be refused.

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

Re C. F. Nelson Pratt et al.

[D. P. U. 3814.]

Rates — Interurban railways — Exit fares.

The establishment of an exit fare, in addition to the fare paid on boarding a train, was authorized in a modified form through the use of exit coupons, permitting an increase between certain stations in the schedule of an interurban railway.

[March 21, 1930.]

PETITION of patrons of an interurban railway against proposed fare increases; rates adjusted.

By the DEPARTMENT: The Boston, Revere Beach & Lynn Railroad Company, in its new schedule of rates, proposes to increase the fare between stations in Lynn and stations in Boston and Winthrop from the present cash fare of 10 cents to 15 cents. The schedules also provide for the sale of 12-trip tickets for \$1.50. The proposed fare is thus a 15-cent cash fare, or a 13½-cent ticket fare. The rates between stations in Winthrop and Boston and between stations in Revere and Boston are not increased; nor are the fares between Lynn and Revere Beach increased.

A public hearing was held at which various persons objected to the proposed increase, and the railroad submitted evidence tending to show a need for greater revenue to meet the cost of repairs to its ferries and to some of its stations, and to set aside adequate depreciation.

The cash fare on the Boston & Maine Railroad between Lynn and Boston is 42 cents. The fare by use of a 12-ride ticket is 19½ cents. While

the distance between Lynn and Boston over the Boston & Maine railroad is somewhat greater than that over the Boston, Revere Beach & Lynn railroad, nevertheless the proposed schedule of the latter provides for a 15-cent cash fare, as contrasted with a 42-cent cash fare on the Boston & Maine railroad, and for a 12½-cent ticket fare, as contrasted with a 19½-cent ticket fare on the Boston & Maine railroad. On this basis we cannot say that the proposed rates of the Boston, Revere Beach & Lynn Railroad Company are unreasonable. The fare between Lynn and Revere is 10 cents. It is neither unreasonable nor unfair to require passengers riding from Lynn to Boston or Winthrop to pay an additional charge of 2½ cents, if tickets are used, or of 5 cents, if a cash fare is paid, for riding the extra distance from Revere to Boston or Winthrop. The proposed rates per mile of transportation are less than those charged by any railroad in the commonwealth, and, so far as we are aware, are less than

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those charged by any railroad in the country.

If, by reason of the changed rates, the company derives a revenue in excess of that required for dividends necessary to maintain its credit, it should be devoted to necessary repairs and to the improvement of the service of the railroad.

We do not approve of the proposed method of collection of fares. Under the company's proposal, all persons leaving the stations at West Lynn and Lynn were to pay 5 cents, or present an exit coupon, in addition to the 10-cent cash fare already paid, and all persons entering those stations were to pay a 15-cent fare. Those passengers intending to leave the train within the 10-cent zone would obtain in the Lynn stations a redemption coupon entitling them to receive 5 cents at the station where they left the train. Our objection to the proposed method of collecting the fares has been that in the heavy traffic of the summer months at the Crescent Beach and Bath House stations there might be passengers traveling to Lynn who would not receive their exit coupons and thus would be obliged to pay 15 cents for a 10-cent ride. In addition, the company's proposal would be likely to cause confusion and delay at the exits of the Lynn stations in times of heavy traffic. Through our engineering division we have suggested changes in the company's plan, to insure passengers receiving their exit coupons at the Crescent Beach and Bath House stations, and to relieve any delay to passengers leaving the stations at Lynn.

We think, also, that the company should make provision for monthly or other form of tickets entitling students under the age of twenty-one years to ride between the Lynn stations and the Boston stations at a rate not to exceed one-half the cash fare. This will enable such students to ride for $7\frac{1}{2}$ cents, instead of for the present fare of 10 cents.

Arguments were presented at the hearing that the company should provide a 5-cent fare between stations in East Boston, the same as provision is made for such fares between stations in Winthrop and Revere. This is a matter which we think is not properly before us in the present proceedings, as the fares now in effect between the stations in East Boston are in no way affected by the proposed new schedules of fares.

As the changed method of collection of fares will provide for the use of tickets from Lynn to Boston and Winthrop only, and the use of exit coupons at the Lynn stations only, the schedule should be modified so as to provide, in place of the sale of 12-trip tickets for \$1.50, the sale of 6 tickets from the Lynn stations to Boston or Winthrop, together with 6 exit coupons good at the Lynn stations, for 90 cents. The passenger will use one ticket to Boston or Winthrop, which costs him $12\frac{1}{2}$ cents, and in returning he will pay 10 cents into the turnstile in the Boston or Winthrop stations and deliver an exit coupon which has cost him $2\frac{1}{2}$ cents, either to collectors on the trains, between the Point of Pines and Lynn stations, or at the Lynn stations.

CALIFORNIA RAILROAD COMMISSION

CALIFORNIA RAILROAD COMMISSION

Re Inland Empire Gas Company

[Decision No. 22238, Application No. 16296.]

Security issues — Notes — Refunding.

1. The issue of notes by a utility to pay or refund outstanding notes may not be done without authorization, p. 140.

Security issues — Necessity for authorization — Demand notes.

2. A demand note representing accrued and unpaid interest on outstanding notes may be issued by a utility without authorization, p. 140.

[March 20, 1930.]

APPPLICATION of a gas utility for authority to issue certain securities; granted.

APPEARANCE: J. D. Taggart, for applicant.

By the COMMISSION:

ORDER

Inland Empire Gas Company asks permission to issue \$125,000 of 8 per cent unsecured demand notes to refund \$125,000 of 12 per cent unsecured demand notes and to issue a new demand note for the accrued and unpaid interest on said \$125,000 of 12 per cent notes from April 8, 1928, or such later date on which the demand notes were issued, to February 1, 1930.

[1, 2] The company has outstanding, as said, \$125,000 of 12 per cent demand notes issued from time to time as its required construction funds. The notes were issued in varying amounts from November 8, 1927, to November 25, 1929, both inclusive. Under the provisions of the Public Utilities Act, the issue of the notes did not have to be, and was not, authorized by the Commission. However, the issue of notes to pay or refund the \$125,000 of notes may not be done without authorization from the Commission.

The company may issue a demand note to represent the accrued and unpaid interest without permission from the Commission. That portion of applicant's request will, therefore, be dismissed.

The Commission has considered the request of applicant and is of the opinion that this is a matter in which a public hearing is not necessary, and that the money, property, or labor to be procured or paid for by the issue of the \$125,000 of notes is reasonably required for the purpose specified in this order, and that such purpose is not in whole or in part reasonably chargeable to operating expenses or to income;

It is hereby ordered, that the Inland Empire Gas Company be and it is hereby authorized to issue, on or

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before September 1, 1930, its unsecured 8 per cent demand note in the principal sum of \$125,000 for the purpose of paying or refunding the demand notes set forth in Exhibit "A," filed in this proceeding and aggregating \$125,000 face value.

It is hereby further ordered, that this application, in so far as it involves the issue of a demand note to pay or refund accrued and unpaid interest,

be and it is hereby dismissed for want of jurisdiction.

It is hereby further ordered, that the authority herein granted will become effective when applicant has paid the fee prescribed by § 57 of the Public Utilities Act, which fee is \$125, and that applicant shall file with the Commission, within thirty days after the issue of the note herein authorized, a copy of such note.

SOUTH DAKOTA BOARD OF RAILROAD COMMISSIONERS

Re Henry Hamilton

[Order No. 3759-A.]

Interstate commerce — Commission jurisdiction — Convenience and necessity.

1. The Commission has no authority to inquire into the question of convenience and necessity in granting an application of a motor carrier for authority to operate in interstate commerce, p. 142.

Interstate commerce — Uniform rate regulation by the state — Busses.

2. An interstate bus company, upon being given a certificate to operate in interstate commerce, should file and put into effect rates on the same level as those filed by similar companies operating under similar conditions, both as a matter of uniformity and as a matter of taxation, p. 142.

[March 11, 1930.]

APPPLICATION of a motor carrier for a certificate of convenience and necessity to operate in interstate commerce; granted.

APPEARANCES: Evans and Evans, Attorneys, Pipestone, Minnesota, for the applicant; Caldwell and Burns, Attorneys, Sioux Falls, for the protestants, Chicago, St. Paul, Minneapolis & Omaha Railway Company and Wilson Transportation Company; Parlman and Parlman, Attorneys, Sioux Falls, for the applicant James M. Burke.

P.U.R.1930C.

By the BOARD: Henry Hamilton, an individual, of Luverne, Minnesota, has made application to the Board of Railroad Commissioners for a certificate to operate as a Class A motor carrier in the transportation of property between Luverne, Minnesota, and Sioux Falls, South Dakota, with no intermediate stops, in interstate transportation only, on a time sched-

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ule which contemplates leaving Luverne at 7:30 A. M., arriving at Sioux Falls, 8:30 A. M.; leaving Sioux Falls 1 P. M., arriving Luverne, 2:30 P. M. He proposes to transport groceries, fruits, and other merchandise on a rate schedule as follows: First class, 35 cents; second class, 30 cents; third class, 25 cents; fourth class, 20 cents; with a minimum charge of 30 cents.

A similar application was made by James M. Burke, of Sioux Falls, and both matters being similar as to the nature and character of the operations, both were assigned for hearing at Sioux Falls at the same time and place and a joint record made.

[1] At the opening of the hearing, the Board announced that it was not its purpose to inquire into the question of convenience and necessity. The applicant, however, introduced testimony tending to show that the service proposed was in the public interest, and in rebuttal to such testimony, the protestants showed that the Chicago, St. Paul, Minneapolis & Omaha Railway operates two passenger trains each way daily, carrying baggage, mail, and express, and daily except Sunday way freight service between Sioux Falls and Luverne; that the Wilson Transportation Company operates a truck line between these two points and that the present transportation facilities are entirely adequate.

Bush & Sons Co. v. Maloy (1925) 267 U. S. 317, 69 L. ed. 627, P.U.R. 1925C, 488, 45 Sup. Ct. Rep. 326, holds that a state cannot deny the use of its highways to motor vehicles operated by common carriers, for hire, over regular routes in interstate P.U.R.1930C.

commerce, merely because existing lines of transportation would be prejudiced thereby. The supreme court of Rhode Island, in Newport Electric Corp. v. Oakley (1925) 47 R. I. 19, P.U.R.1925E, 475, 129 Atl. 613, held that a certificate cannot be withheld from a person about to engage in interstate commerce on the ground that the public is being adequately served over the proposed route or that public convenience and necessity do not require the contemplated service. The record in this case shows that it is the intention of the applicant to operate between Sioux Falls and Luverne and to perform no intrastate service whatsoever.

[2] The record shows that the applicant proposes to establish a schedule of rates lower than those now in use by the Wilson Transportation Company and by the railway company. There are many court decisions on questions of taxation of motor carriers, wherein the rule adopted in *Morris v. Doby* (1927) 274 U. S. 135, 71 L. ed. 966, 47 Sup. Ct. Rep. 548, is generally accepted. It was there held that users of highways, although engaged exclusively in interstate commerce, may be required to contribute to their costs and upkeep; that common carriers, for hire, who make highways their place of business, may properly be charged an extra tax for such use; that it is not a discrimination against interstate carriers to subject them to special taxes where it cannot be shown that the tax falls on the carrier with a disproportionate economic weight. (See *Interstate Busses Corp. v. Blodgett* (1928) 276 U. S. 245, 72 L. ed. 551, P.U.R.1928C, 144, 48 Sup. Ct. Rep.

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230). In the instant case, there is no question of unusual or discriminatory tax. The state of South Dakota is interested in the subject of rates charged by motor carriers for the reason, among others, that the tax received by the state is based upon the gross earnings of the carrier and the gross earnings depend, in a large measure, upon the rates and charges. The state is also interested in the adoption of reasonable and uniform rates and inasmuch as the rates filed and charged by the Wilson Transportation Company have not been found to be unreasonable, we believe that it is in the public interest, both as a matter of uniformity and as a matter of taxation, for the applicant in this case to file and put into effect rates on the same level with those of the Wilson Transportation Company.

After carefully considering the entire record, the Board is of the opinion and finds that the application of Henry Hamilton to operate as a Class A motor carrier of property, for hire, between Sioux Falls and the South Dakota-Minnesota state line, where the same is intersected by Federal Highway No. 16, in interstate transportation only, should be granted and

that an order should be entered accordingly.

Let an order be entered accordingly.

On this date, the Board having completed its investigation and made and filed its report containing its findings of fact and conclusions thereon, a copy of which is hereto annexed, hereby referred to and made a part hereof, and the Board being fully advised in the premises, and sufficient cause for this order appearing;

It is therefore *ordered*, That a certificate be issued to the applicant, Henry Hamilton, an individual, of Luverne, Minnesota, to operate as a Class A motor carrier of property, for hire, between Sioux Falls and the South Dakota-Minnesota State line, where the same is intersected by Federal Highway No. 16, at rates and upon the time schedule as filed, upon the filing and approval of bond or public liability insurance as required by law, and the rules and regulations in effect; that such certificate shall limit the carrier to interstate operations only; that such certificate shall be subject to modification after hearing, upon complaint or upon the Board's own motion.

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NEW YORK SUPREME COURT, SPECIAL TERM, NEW YORK
COUNTY

City of New York
v.
Interborough Rapid Transit Company

(— Misc. —, 240 N. Y. Supp. 316.)

Constitutional law — Delegation of powers — Municipal rate regulation.

1. The state may delegate authority to a municipal corporation to establish by contract the rates to be charged by a public utility for a definite term, thereby suspending during the life of such contract the governmental power of regulating such rates, p. 148.

Rates — Powers of courts — Contracts.

2. The courts will not relieve a utility from its obligation to serve at rates agreed in a valid contract entered into by it with a municipality, however inadequate such rates might be, as the enforcement of such rates is controlled by the obligation resulting from the contract, p. 148.

Rates — Contractual agreement — Effect of regulatory statutes.

3. A contract between a city and a rapid transit company fixing a fare to be charged during the term of the agreement was held not to be subject to a subsequent regulatory provision of the Public Service Commission Law regarding rates, in view of the expressed intent of the legislature that the agreement so fixed between the parties should be free from subsequent regulation, p. 149.

Contracts — Contractual profit as grounds for breach.

4. That a contract may prove to be unprofitable for one party is not sufficient ground to relieve that party from its duty of performance, p. 152.

Parties — Specific performance of rate contract.

5. The New York Transit Commission was held to be the proper party to institute proceedings to compel specific performance by a rapid transit company of a so-called 5-cent fare contract in the leasing of a rapid transit system from a city, p. 153.

Injunction — Threat of violation of rate contract.

6. Where the operator of a rapid transit system has threatened to violate contract provisions fixing the rate of fare to be charged, sufficient grounds exist for the city to sue and obtain an injunction restraining the breach of such agreement, p. 153.

[February 28, 1930.]

ACTION by the Transit Commission for the use of the city of New York against a rapid transit company to compel specific performance of a contract fixing fare at 5 cents; judgment for the plaintiff.

NEW YORK v. INTERBOROUGH RAPID TRANSIT CO.

APPEARANCES: Arthur J. W. Hilly, Corporation Counsel, of New York city (E. J. Kohler, Joseph A. Devery, and M. Maldwin Fertig, all of New York city, of counsel), for the city; Samuel W. Untermyer and Irwin Untermyer, both of New York City, for Transit Commission; James L. Quackenbush and W. L. Ransom, both of New York city (J. H. Goetz, A. S. Hubbard, and John Fletcher Caskey, all of New York City, of counsel), for defendant.

INGRAHAM, J.: The present action has been brought by the Transit Commission of the state of New York, for and on behalf of the city of New York, to compel a specific performance by the defendant of the so-called "five-cent fare clauses" in two certain contracts to which the defendant is a party, which contracts are known, or at least have come to be known in the course of this litigation, as Contract No. 3 and the Elevated Extension Certificate. The plaintiff also seeks to enjoin the defendant from carrying out its avowed intention of increasing the existing rate of fare on its subway and elevated lines from 5 to 7 cents. This suit constitutes, therefore, another chapter in the history of rapid transit within this metropolis, where the problem of transporting millions of inhabitants is rendered exceedingly more difficult by reason of the countless thousands of transients constantly within the gates of our city. This history, in so far as it is relevant to the case now under consideration, may be, on account of the limitations of a decent economy of space, only briefly outlined.

It dates from the passage of the

Rapid Transit Act of 1891 by the legislature of this state in an effort to aid in the provision of "Rapid Transit Railways in cities of over one million inhabitants." That statute contemplated private construction and operation of rapid transit lines under franchises to be granted by the Board of Rapid Transit Commissioners, therein appointed (chapter 4, Laws of 1891). Section 7 of the act provided that the terms of sale of such franchises "must," among other things, "specify the . . . maximum rates of fares and freight which such corporation may charge and collect for the carriage of persons and property." The act also contained authority (§ 32) for the Commissioners to permit the extension of existing or thereafter constructed lines and for the issuing of an "Extension Certificate" therefor upon specified conditions and upon "such other terms, conditions, and requirements as to the said board may appear just and proper." In 1894 this act was amended to provide for a referendum at the next general election upon the question whether rapid transit facilities in the city of New York should be constructed by the city (§§ 12 and 13, c. 752, Laws of 1894). The people approved the proposal by an overwhelming vote in its favor, and under sanction of this act were constructed the lines owned by the city and now operated by the defendant as its subway division. What are known as Contracts 1 and 2, covering these lines, were entered into on February 21, 1900, and July 21, 1902, and subsequently assigned to the defendant. Both of these contracts contain the following provision: "The contrac-

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tor shall during the term of the lease be entitled to charge for a single fare upon the railroad the sum of 5 cents, but not more." The defendant apparently has never denied that Contracts 1 and 2 established an inflexible 5-cent fare.

In 1903 defendant leased all the elevated lines of the Manhattan Railway Company for a term of 999 years, agreeing to pay as rental therefor 7 per cent on the stock of the Manhattan Company. In 1906 the Rapid Transit Act was amended requiring the approval of the city in the execution of any contract or extension certificate (chapter 472, Laws of 1906). In 1907 there was passed the Public Service Commission Law (chapter 429, Laws of 1907), the relation of which to the questions here involved will later be discussed. In 1909 further amendments were made to the Rapid Transit Act (Laws 1909, c. 498) to further extend the powers of the Commission and the city. Contracts 1 and 2 failed to provide adequate facilities to properly care for the city's ever growing need for more rapid transit facilities, and there were proposed two plans for the construction and operation of new lines; one of these, under agreement with the defendant, ripened into Contract No. 3 and the Elevated Extension Certificate of 1913, with which we are here concerned. The most casual reading of the record of negotiations preliminary to these agreements yields no other conclusion but that the 5-cent fare clause furnished the chief bone of contention between the city and the Commission on the one hand, and the defendant on the other. The Supreme Court of the P.U.R.1930C.

United States, in the case of *Gilchrist v. Interborough Rapid Transit Co.* (1929) 279 U. S. 159, 73 L. ed. 652, P.U.R.1929B, 434, 447, 49 Sup. Ct. Rep. 282, 287, refers to the events transpiring during this period, as follows: "In 1912, as specially requested by the Board of Estimate and with full knowledge of the circumstances, the legislature enacted the Wagner Bill which amended the Rapid Transit Act, so as definitely to authorize the contracts and certificates, finally signed March 19, 1913, and above described, whose provisions, after long negotiations, had been tentatively agreed upon prior to the amendment."

The amendment referred to was contained in a bill introduced in the New York state legislature by Senator Robert F. Wagner and which had been drafted by the Public Service Commission. Pending its passage the Board of Estimate and Apportionment passed a resolution on March 21, 1912, wherein we find the following significant language:

"Whereas, the Public Service Commission for the First District and the Board of Estimate and Apportionment of the city of New York have under consideration plans for the construction and operation of a system of subway and rapid transit lines that will extend rapid transit facilities to every part of the city and secure to the people an extension of service that will increase threefold the area throughout which passengers may be carried for a single 5-cent fare; and

"Whereas, There is now pending before the legislature an act amendatory of the Rapid Transit Act . . .

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and designated to permit the public authorities to enter into contracts for the construction, equipment and operation of rapid transit lines. . . .

"Resolved, that the Board of Estimate and Apportionment of the city of New York earnestly urges upon the legislature the importance of the prompt passage of Senate Bill No. 1277 amending the rapid transit act and introduced by Senator Wagner on March 18th. . . ."

The bill in question was enacted on April 9, 1912, as chapter 226 of the Laws of 1912. On March 19, 1913, Contract No. 3 and the Elevated Extension Certificate were executed. In both agreements the continuance of a maximum fare of 5 cents was agreed to by the defendant.

The 5-cent fare clause in Contract 3 is set forth as follows (article XLII): "The lessee shall during the term of the contract be entitled to charge for a single fare upon the railroad and existing railroads *the sum of 5 cents but not more.*" In return for the promise by the defendant of the 5-cent fare, there was conferred upon it the benefit of certain preferential payments out of revenue in order that it might be compensated for a possible diminution of earnings from the operation of an extended system at a single fare. In the Elevated Extension Certificate (article VI) it is provided: "The Interborough Company shall be entitled to charge for a single fare for each passenger for one continuous trip . . . *the sum of 5 cents but not more.*" In the certificate, the division of earnings between the defendant and the city is such as to clearly demonstrate that the parties to the agreement understood that the

preferential payments therein guaranteed to the company were promised to it as a protection for a possible falling off in earnings as a result of the operation of an extended system at a single fare of 5 cents. In both documents the bargain stands out as if the details of the negotiations were there set forth. The preferential payments and guaranteed revenue were the price the city paid for the defendant's promise that the 5-cent fare would endure so long as the contracts would live.

Other provisions of Contract No. 3 are important, as follows: "Article I. . . . The city and the lessee further agree upon the modification of Contract No. 1 and Contract No. 2 in the respects herein set forth, but nothing in this contract shall be construed as a modification or waiver of any of the rights or obligations of the respective parties . . . except in the respect and to the extent herein specifically set forth."

In this connection it must be noted that the 5-cent fare provisions contained in Contracts Nos. 1 and 2 are not specified among the provisions modified by Contract No. 3. "Article III. This contract is made pursuant to the Rapid Transit Act which is to be deemed a part hereof as if incorporated herein."

The Elevated Extension Certificate contained provisions defining the word "city" as used therein to mean the city of New York or any other corporation or division of government to which the ownership, rights, powers, and privileges of the city of New York shall hereafter come, belong, or appertain, "*under the Rapid Transit Act,*" and similarly the word "Com-

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mission" to mean the Public Service Commission for the First District "in so far as it acts herein under the *Rapid Transit Act*" or any official to whom the powers now "conferred upon the said Commission by the *Rapid Transit Act*" may hereafter be transferred.

In order that the picture may be complete, reference must be made to the efforts of the defendant in the past decade to obtain an increase of fare on its lines covered by the contracts in question. In 1920, it applied to the Public Service Commission for a higher fare on its subway lines. The application was denied, whereupon defendant instituted certiorari proceedings to review the action of the Commission which proceeding it discontinued two years later. In 1922, defendant applied anew for the increase on both subway and elevated lines, and when the Transit Commission refused to take jurisdiction of the petition, no further steps were taken by the defendant. On February 14, 1928, the defendant instituted an action in the United States District Court for the Southern District of New York, and sought therein an injunction against an attempt to interfere with the establishment of a 7-cent fare on the subway division and Manhattan division. An interlocutory injunction was granted by the District Court [26 F. (2d) 912, P.U.R. 1928D, 92], but on appeal to the Supreme Court of the United States the determination of the District Court was reversed. *Gilchrist v. Interborough Rapid Transit Co.* (1929) 279 U. S. 159, 73 L. ed. 652, P.U.R. 1929B, 434, 49 Sup. Ct. Rep. 282. The present action was also com-

menced on February 14, 1928, the same day as the action in the Federal District Court, following the rejection by the Transit Commission of the 7-cent fare schedules filed by the defendant under § 29 of the Public Service Commission Law. By an order of this court, signed by Mr. Justice Frankenthaler, the issue of confiscation has been severed from the other issues presented in the action, leaving as the basic question to be decided here whether the provisions of Contract No. 3 and the Elevated Extension Certificate, guaranteeing a 5-cent fare during the endurance of the agreements, are subject to the regulatory provisions of the Public Service Commission Law.

[1, 2] It is settled beyond successful dispute that a state may authorize a municipal corporation to establish by an inviolable contract the rates to be charged by a public service corporation for a definite term and thereby suspend during the life of such contract the governmental power of fixing and regulating rates. *Home Teleph. & Teleg. Co. v. Los Angeles* (1908) 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50; *St. Cloud Pub. Service Co. v. St. Cloud* (1924) 265 U. S. 352, 68 L. ed. 1050, 44 Sup. Ct. Rep. 492; *California R. Commission v. Los Angeles R. Corp.* (1929) 280 U. S. 145, 74 L. ed. —, P.U.R. 1930A, 1, 50 Sup. Ct. Rep. 71. And in such cases the courts may not relieve the utility from its obligation to serve at the agreed rates, however inadequate. The enforcement of such rates is controlled by the obligation resulting from the contract. *St. Cloud Pub. Service Co. v. St. Cloud*, *supra*;

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California R. Commission v. Los Angeles R. Corp. *supra*.

[3] As has been pointed out, the agreements in question were entered into pursuant to the authority of the 1912 amendments to the Rapid Transit Act (Laws 1912, c. 226). This fact was recognized by the Supreme Court of the United States, when it said in *Gilchrist v. Interborough Rapid Transit Co. supra*, at p. 447 of P.U.R.1929B: "In 1912, as specially requested by the Board of Estimate and with full knowledge of the circumstances, the legislature enacted the Wagner bill which amended the Rapid Transit Act, so as definitely to authorize the contracts and certificates, finally signed March 19, 1913, and above described, whose provisions, after long negotiations, had been tentatively agreed upon prior to the amendment."

While apparently under prior legislation the Commission was empowered to enter into such contracts, any possible doubt was entirely dissipated by the enactment of the Wagner Bill. *Admiral Realty Co. v. New York* (1912) 206 N. Y. 110, 99 N. E. 241, Ann. Cas. 1914A, 1054. The Public Service Commission Law, as was indicated by the United States Supreme Court in the *Gilchrist Case, supra*, at p. 448 of P.U.R.1929B, "is a general law relative to regulations and control of public utilities throughout the state. It contains no words purporting to amend or modify the Rapid Transit Act except: Those abolishing the Board of Rapid Transit Railroad Commissioners and directing that, in addition to other duties . . . the Commission . . . shall have and exercise all the powers heretofore con-

ferred upon the Board of Rapid Transit Railroad Commissioners . . ."

Section 27 of the Rapid Transit Act, as amended in 1912 (Laws 1912, c. 226, § 8), empowered the Commission to enter into a contract with the defendant and provided that such contract should contain "such terms and conditions as to the rates of fare to be charged and the character of services to be furnished and otherwise as said Commission shall deem to be best suited to the public interests." Section 24 of the act, as similarly amended (Laws 1912, c. 226, § 3) with reference to the Elevated Certificate, authorized the Commission to "fix and determine the locations and plans of construction of the railroads upon such route or routes and of such tracks and facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by said person, firm or corporation, and such other terms, conditions, and requirements as to the said boards may appear just and proper." This section further provided that such a certificate, when delivered and accepted, should "be deemed to constitute a contract between the said city and said person, firm, or corporation according to the terms of the said certificate; and such contract shall be enforceable by the Commission acting in the name of and in behalf of the said city or by the said person, firm or corporation according to the terms thereof." (§ 24, subd. 4, as amended by Laws 1909, c. 498, § 7). A reading of other provisions persuasively carries us to the conclusion that the intent of the legislature in enacting the amendments of 1912 was to authorize the execution

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of contracts with respect to the rate of fare to be charged on both the subway and elevated lines (§ 29, subd. 3; § 38; § 27, subd. 8). The defendant strenuously contends that, since the Transit Act as amended, with particular reference to § 24, contains no specific reference to fares, no authority was conferred upon the Commission to contract concerning the rate of fare on the elevated lines. Section 24, when read in conjunction with the entire act, contains language sufficiently broad to include fares, and under its provisions the Commission is empowered to contract with reference to rates of fare as well as to prescribe other requirements in the agreements. The conclusion becomes unescapable therefore that the legislature, having expressly authorized the fare stipulations entered into between the Commission and the defendant in Contract 3 and the certificate, could not have intended at the same time to subject the contract to subsequent regulation. To hold that such an intention existed would be in effect to brand the action of the legislature as purposeless.

This phase of the question has received the consideration of the United States Supreme Court in *Gilchrist v. Interborough Rapid Transit Co.* (1929) 279 U. S. 159, 73 L. ed. 652, P.U.R.1929B, 434, 451, 49 Sup. Ct. Rep. 282, wherein is found the following significant language: "The power of the city to enter into contracts numbers 1 and 2 was affirmed in *Sun Printing & Publishing Asso. v. New York* (1897) 152 N. Y. 257, 46 N. E. 499, 37 L.R.A. 788; likewise the validity of contract number 3 was declared in *Admiral Realty* P.U.R.1930C.

Co. v. New York (1912) 206 N. Y. 110, 99 N. E. 241, Ann Cas. 1914A, 1054." These cases point out that the object of those contracts was to secure the operation of railways properly declared by statute to be part of the public streets and highways and the absolute property of the city. And further in the same opinion: "Both the bill of complaint and the argument of counsel here proceed upon the theory that under the law of New York, as clearly interpreted by definite rulings of her courts, the contracts for operating the transit lines impose no inflexible rate of fare. With this postulate we cannot agree." The Supreme Court then comments on the decision of the Court of Appeals of this state in the case of *People ex rel. New York v. Nixon* (1920) 229 N. Y. 356, P.U.R.1920F, 1008, 128 N. E. 245, which is cited with great reliance by the defendant in the instant action. No better refutation could be found for the argument advanced by the Interborough here that the *Nixon Case*, *supra*, is authority for its contention than to quote the following language of the supreme judicial tribunal of the land (*Gilchrist v. Interborough Rapid Transit Co. supra*, at p. 452 of P.U.R.1929B): "The circumstances there were radically different from those now presented. The effect of a contract with the city, expressly authorized by amendment to the Rapid Transit Act adopted subsequent to enactment of the Public Service Commission Law, was not involved. The court carefully limited its opinion. And it said: 'The conditions of other franchises may supply elements of distinction which cannot be foreseen. Contracts made after

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the passage of the statute (Consol. Laws, chap. 48, Public Service Commission Law.) may conceivably be so related to earlier contracts either by words of reference or otherwise as to be subject to the same restrictions. We express no opinion upon these and like questions. They are mentioned only to exclude them from the scope of our decision. In deciding this case, we put our ruling upon the single ground that the franchise contract of October, 1912, was subject to the statute and by the statute may now be changed.'"

The Nixon Case, *supra*, therefore, contains no authority for the proposition advanced by defendant here to sustain its attempt to annul a condition accepted by it as a part of its agreement and to impair the obligation which it assumed in return for the benefits it has received under the contracts which it now seeks to abrogate. Neither are *People ex rel. South Glens Falls v. Public Service Commission* (1919) 225 N. Y. 216, P.U.R.1919C, 374, 121 N. E. 777, and *North Hempstead v. Public Service Corp.* (1921) 231 N. Y. 447, P.U.R.1921E, 713, 132 N. E. 144, productive of authority to support defendant's contention. In those cases there was lacking the very authority to contract, which the parties here received by virtue of the Rapid Transit Act and amendments thereto.

I cannot agree with defendant's claim that the fare provisions of Contracts 1 and 2 were abrogated and superseded by the provisions of Contract 3. As has been pointed out, the recitals in Contract 3 expressly state that "nothing in this contract shall be construed as a modification or waiver P.U.R.1930C.

of any of the rights or obligations of the respective parties under Contract Number 1 and Contract Number 2, excepting in the respect and to the extent herein specifically set forth." The fare provisions of the earlier agreements are not among the exceptions noted in the later contract. Rather, then, the agreements with which we are here concerned "made after the passage" of the Public Service Commission Law are "so related to earlier contracts . . . as to be subject to the same restrictions." It has been settled that the Public Service Commission Law is not sufficiently clear and definite to be held to apply to contracts executed prior to its enactment. *Quinby v. Public Service Commission* (1918) 223 N. Y. 244, P.U.R.1918D, 30, 39, 119 N. E. 433, 3 A.L.R. 685. As was said by the court of appeals in the case last cited: "The delegation of legislative power to commissions and other administrative officers and boards need not be assumed if the general words from which such delegation may be inferred are not reasonably so construed. In the absence of clear and definite language conferring, without ambiguity, jurisdiction upon the Public Service Commission to increase rates of fare agreed upon by the street railroad and the local authorities, we should not unnecessarily hold that the legislature has intended to delegate any of its powers in the matter, whatever its powers may be. The Public Service Commissions Law . . . and the Railroad Law . . . deal with maximum rates of fare established by statute, but make no reference in terms to rates established by agreement with local authorities. . . . As it has often been held in

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connections other than that of legislative power over them that such agreements are valid, it may well be inferred that the legislature excluded them from consideration by failure to mention them, and that it has made no attempt to turn them over to the Public Service Commission for revision." Had the legislature intended to subject the the rates agreed to by the parties here to regulation under the Public Service Commission Law, it might easily have amended the Rapid Transit Act in that regard as it did in the case of the Railroad Law, which it amended to subject statutory rates to the jurisdiction of the Commission. That it failed to do so in the case of the Rapid Transit Act indicates that the legislature intended that the contractual rates of fare authorized by that act should be immune from regulation by the Commission.

That the legislature intended the parties to establish a contractual rate which would be free from subsequent alteration or regulation, except by the consent of the contracting parties, and that such intention on the part of the legislative body was understood and accepted by the defendant, as well as by the city, is clearly indicated by the amendments to the Public Service Commission Law in 1921, 1922, and 1923 (Laws 1921, c. 134, Laws 1922, c. 153, Laws 1923, c. 891). In 1921 the legislature (Laws 1921, c. 134) so amended § 49 of the act as to include any "contract, grant, franchise condition, consent, or other agreement." Defendant claims that the purpose of this amendment was to subject the very contracts which we have been discussing to the operation of the Public Service Commission

Law. In 1923 (Laws 1923, c. 891) the statute was again amended, with the result that § 49 was restored virtually to the condition in which it was prior to the passage of the 1921 amendment. Clearly this indicates that prior to 1921 the legislature did not consider these agreements subject to the regulatory provisions of the Public Service Commission Law, and by restoring the law as it was prior to 1921 any power the Commission then received was removed. That this interpretation of the statutes was not, as late as 1925, disputed by the defendant, is shown by its petition in that year addressed to the legislature asking for an increased fare upon the theory that such relief could be obtained from the legislature alone.

[4] Defendant fails to point out a single instance where the Public Service Commission attempted to exercise regulatory jurisdiction over the rate of fare charged upon defendant's lines. That such regulation may have existed in other particulars fails to justify the conclusion that the contracts in question were to be subject to the regulatory powers of the Commission. Contracts between municipalities and transit companies are subject to the same rules, before the law, as agreements between individuals. The importance of the subject matter or the magnitude of the contracting parties is powerless to affect the rules of law regarding the enforcement of a binding agreement. The contracts here, and the rate of fare clauses therein, were specifically authorized by the legislature which delegated to the parties the power to contract concerning fares. That the contract may subsequently have proved unprofitable for

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one party is not sufficient ground to relieve that party from its duty of performance.

[5, 6] To pursue defendant's argument to its logical conclusion would be tantamount to branding the 1912 amendments to the Rapid Transit Act as a meaningless gesture. To do so would be to hold that although the legislature authorized the contracts in question, they are subject to regulation and alteration just as if no specific sanction conferred authority for their execution. For what purpose then was the Wagner Bill enacted? Not to ascribe to it its apparent and legal effect is to make a mockery of the solemn, deliberate action of the legislative branch of our government. The fare clauses appearing in the contracts here were specifically authorized and the obligation of both parties remains. The defendant cannot repudi-

ate the portion which may have become onerous. The city is entitled to a specific performance on the part of the defendant of its contractual duty, thereby assuring to those traveling upon the lines covered by these agreements the uninterrupted continuance of the 5-cent fare. The plaintiff is the proper person to institute the present action (§ 210, Civil Practice Act; Public Service Commission Law, § 108; Rapid Transit Act, § 9, subds. 1 and 2 [amended Laws 1909, c. 498]); and the threatened violation of its contracts by the defendant is sufficient ground for an injunction (Vicksburg Waterworks Co. v. Vicksburg (1902) 185 U. S. 65, 46 L. ed. 808, 22 Sup. Ct. Rep. 585).

Plaintiff is entitled to the relief demanded. Present, on notice, proposed findings of fact and conclusions of law, together with final judgment.

PENNSYLVANIA PUBLIC SERVICE COMMISSION

John Beach

v.

George K. Renn

[Complaint Docket No. 8048.]

Certificates — Scope — Private and common carriage.

The holder of a certificate of convenience and necessity cannot engage as a common and private carrier at the same time, with the same facilities, in the same territory, and under the same trade name.

[February 24, 1930.]

APPPLICATION to require a motor bus company to operate within the scope of powers stated in its certificate; relief granted.

PENNSYLVANIA PUBLIC SERVICE COMMISSION

By the COMMISSION: Complainant alleges that respondent, the holder of certificates of public convenience for certain scheduled and group-party services, has violated the provisions of the Public Service Company Law by engaging in common carriage of passengers in group-party service from the borough of Kulpmont as the point of origin, without having first obtained from this Commission approval thereof. None of respondent's certificates includes Kulpmont as an originating point.

At the hearing, counsel for the complainant and respondent agreed upon the facts of the case, which were that on two consecutive days, respondent had transported a large number of school children from Kulpmont to certain recreation centers under contracts with the School Board of the district.

Respondent holds himself out to the public as a common carrier of passengers by motor vehicle, both in scheduled and group-party service similar to that here involved. Under the decisions of this Commission and the

superior court, particularly *York Motor Express v. Public Service Commission* (1929) 96 Pa. Super. Ct. 174, one cannot engage as a common and private carrier at the same time, with the same facilities, in the same territory and under the same trade name. The commission consequently finds that the transportation complained of was that of common carriage.

Now, to-wit, February 24, 1930, it is ordered: That the complaint be and is hereby sustained.

It is further ordered: That George K. Renn, respondent, his agents, servants, and employees, forthwith cease and desist from operating a motor vehicle or motor vehicles as a common carrier of passengers from the borough of Kulpmont as a point of origin, or from any other points within the commonwealth of Pennsylvania, except as authorized by certificates of public convenience which have been or may be issued to him in accordance with the provisions of the Public Service Company Law.

CONNECTICUT PUBLIC UTILITIES COMMISSION

Reverend George W. Borden et al.

v.

Bozrah Electric Company

[Docket No. 5381.]

Discrimination — Preference favoring employees — Electricity.

1. Preferential minimum charges allowed by an electric utility to employees of a manufacturer generating its current are discriminatory as against other consumers, p. 157.

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Intercorporate relations — Resale of current to generator.

2. The practice of purchasing current from an individual generating it and selling part of it back to the individual is illegal and unbusinesslike, p. 157.

Payment — Service discontinuance to enforce — Penalty during disconnection.

3. A rule of an electrical utility seeking to impose a penalty upon consumers while service is disconnected for nonpayment was declared to be unreasonable, although a charge for reconnection is proper, p. 157.

[January 16, 1930.]

PETITION of electrical consumers for a review of the rates, rules, and practices of an electric utility; rates adjusted.

By the COMMISSION: The following petition was filed with the Commission on August 1, 1929:

Bozrah, Conn.

July 30, 1929,

To the Public Utilities Commission,
of the State of Connecticut,
Hartford, Connecticut.

We the undersigned taxpayers and residents of the town of Bozrah, Connecticut, believing that the rates of the Bozrah Electric Company for furnishing electricity to its patrons are excessive and having failed to reach an agreement with the said Bozrah Electric Company. We respectfully ask that your Honorable Commission grant a hearing upon the question of rates of the said Bozrah Electric Company at your earliest convenience.

Said petition was originally assigned for a hearing to be held at the office of the Commission in Hartford on Monday, October 14, 1929, at 10:30 o'clock in the forenoon and was later reassigned for hearing on November 1, 1929, at the same place. Notice of the pendency of the petition and of the time and place of hearing on the reassigned date was given to the petitioners and to the Bozrah Electric Company as fully appears from order of notice and return thereon on file. At said time and place the petitioners and the respondent appeared and were fully heard.

The Bozrah Electric Company distributes electricity for light and power in the communities known as Bozrah, Lebanon, Franklin, Leffingwell, Fitchville, and Montville. It serves a total of approximately 121 customers. The territory served is thinly populated and service is supplied to patrons chiefly in the form of separate extensions to serve them, to which many of the patrons have contributed part of the construction cost.

The schedule of rates now in force in the company's territory is as follows:

Name	Address
Rev. Geo. W. Borden, R. D. 2, Norwich, Conn.	
Ira C. Wheeler	" " "
Forrest C. Leffingwell	" " "
John I. Ross	" " "
Thos. C. Leffingwell	" " "
N. E. Whiting	" " "
Roy L. Beard	" " "
Napoleon Labria	" " "
Herbert E. Beard	" " "
George M. Wilson	" " "
J. H. Rathbone	" " "
(Trustee Baptist Church)	" "
S. A. Spicer	" "
(Pres. Leffingwell School League)	" "
Calvin Edmiston	" "

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Residential

Lighting—

First 100 kilowatts	13½¢	per kw.
Next 200 kilowatts	12¢	" "
In excess 200 kilowatts ...	10¢	" "

Commercial

All kilowatts used over minimum at	8¢	per kw.
Users of heaters	3¢	per kw.

Power

First 150 kilowatts	8¢	per kw.
Next 150 kilowatts	5¢	per kw.
All over 300 kilowatts	3.7¢	per kw.

Mills using over 3,000 kilowatts per month	1¢	per kw.
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Minimums:

Salem Line, Franklin and Bozrah ...	\$3.00
Lebanon Line	4.17
Villages of Bozrahville and Fitchville	2.00

By far the greater number of patrons use electricity for lighting only and the average consumption per month of practically all the patrons is less than the minimum of 100 kilowatt hours.

The company owns no plant or equipment for the generation of electricity. It purchases all of its current either from one Nathan Gilman or the Norwich Gas and Electric Department of the city of Norwich. Nathan Gilman is the president and chief stockholder of the Bozrah Electric Company and conducts a manufacturing business in Bozrah under the name of Gilman Brothers. Nathan Gilman as a manufacturer owns a water power plant and sells to the Bozrah Electric Company current generated at a cost of .46 cent a kilowatt hour. Then Nathan Gilman as a manufacturer purchases from the Bozrah Electric Company power used to operate his manufacturing business at a cost of 1 cent a kilowatt hour. He is by far the largest consumer of electricity for all purposes. There are only a few other power consumers and their consumption is small.

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A number of petitioners who reside in Fitchville, a part of Bozrah, testified that they pay a minimum rate of \$3 per month but that a considerable number of other patrons also residing in Fitchville only pay a minimum rate of \$2 per month. It appeared that the individuals enjoying the lower minimum charge are tenants of houses owned by Nathan Gilman as a manufacturer.

The company has been in business for about three years and its last annual report to the Commission covering the year 1928 discloses that the company is not prosperous and has only a small reserve for depreciation and a very small surplus account. Upon the evidence presented at the hearing the Commission cannot say that the rates of the company in force are unreasonable; the form of rates for lighting, however, is such as to discourage patrons from larger or increasing use of electricity and should be revised for the encouragement of larger and practical uses of the service. The company itself practically admitted that the form of rate structure discourages new business.

The power rates applicable to Nathan Gilman as manufacturer appear to be discriminatory compared with the power rates applicable to all other patrons. The schedule of power rates contains a minimum charge of 3.7 cents per kilowatt hour for all power consumed over 300 kilowatt hours a month up to 3,000 kilowatt hours per month, in which latter class Nathan Gilman alone belongs. For such consumption the charge is 1 cent per kilowatt hour. The differential in rate between the aforesaid totals of 300 kilowatt hours and 3,000 kilo-

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watt hours is too great, and is, therefore, discriminatory against other power consumers.

[1] It seems to the Commission that there is discrimination in the minimum rates between residents of Fitchville whereby some of them, apparently employees in the manufacturing plant of Nathan Gilman, are paying a \$2 monthly minimum charge and all other residents of the community are paying \$3 a month minimum charge. This discrimination should be eliminated by establishing a uniform monthly minimum charge.

[2] It further appears to the Commission that the practice now in force of Nathan Gilman as an individual generating current and selling the same to the company which in turn resells part of the current to him is both illegal and unbusinesslike. It seems illegal because Chapter 202 of the Public Acts of 1921 in part prohibits the sale of current generated by a corporation to another corporation without the approval of this Commission. It is unbusinesslike because there is apparently no actual transmission of electricity by Nathan Gilman as an individual to the corporation or from the latter to the former; there is only duplication of bookkeeping transactions. While Nathan Gilman testified that the purpose of these duplicate transactions was to permit the company to make a profit, it seems that the generation of the current by the proper individual, the corporation, and its sale to Nathan Gilman at a reasonable rate would more likely afford the company a profit and at the same time eliminate unnecessary bookkeeping transactions. The Commission, there-

fore, recommends to the company that it acquire at a reasonable price from Nathan Gilman as an individual the water power plant and other equipment now used by that individual in the generation of electricity.

In this connection the amount of current for the year 1928 lost and unaccounted for was approximately 37,600 kilowatt hours, or almost as great as the total current sold for the same year for light. The company should take steps to improve its plant and equipment whereby that excessive loss will be reduced.

[3] It appeared at the hearing that since the institution of this petition the company has provided a new form of application for electric service which all patrons of the company have been requested to sign and in which the following clause appears:

"I (we) agree that this contract shall be subject to rules and regulations of the company as filed with Public Utilities Commission of the state of Connecticut and that if and whenever I (we) shall be as much as fifteen days in arrears in payment of any bill due the company for electric service, or shall violate any of the terms or conditions of this contract, the company may remove its motors, wires, and other appliances and appurtenances which may have been placed upon said premises, without further notice, and because of such default or violation there shall immediately become due and payable by me (us) to the company, as liquidated damages and not as a penalty, the minimum monthly payment provided for in the schedule of rates for the unexpired portion of the contract

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year in which the company's property is removed."

Where a customer's service has been disconnected on account of arrears in payment of bills and service is thereafter installed again, the company's rules may provide for a reasonable charge for such reinstallation.

The petitioners objected to the aforesaid clause on the ground of its unreasonableness and have refrained from executing the application. The Commission believes the objection is well taken. There should be eliminated from the clause any penalty for default in payment, that is, the patron should pay no more than the amount of his unpaid bill at the time of disconnection and no penalty beyond that amount should be exacted.

Subsequent to the hearing the company submitted to the Commission a proposed schedule of rates covering all classes of service, which schedule is modern in form, designed to encourage the use of electricity, and establishes a flat rate or fixed service charge based upon the area of the house and a considerably lower commodity rate. At the same time the present rates for electric light are retained as an alternative for those

consumers whose use of electricity is extremely limited so that the cost of such service to them will not be increased. At the same time consumers of current in moderate amount should profit by a lower cost and be encouraged to use electricity for more than lighting purposes.

The Commission recommends to the company placing in effect the aforesaid revised schedule of rates, which schedule is marked "Schedule A" and attached to this finding. Said schedule is not formally approved nor to be regarded as a Commission-made rate but may be placed in force commencing February 1, 1930, for a trial period of one year from that date at which time the schedule, if satisfactory to the patrons and no written protests shall have been filed with the Commission against the continuance of the schedule, may thereafter be continued in force as the company's schedule of rates.

We hereby determine and direct that notice of the foregoing finding, order, and decree be given by the secretary of the Commission to parties in interest, as by statute provided, on or before the 20th day of January, 1930, and due return make hereon.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Rules and Regulations for Motor Bus Transportation

[P.U.C. 2873, Formal Case No. 210, Order No. 823.]

Automobiles — Service regulation.

The District of Columbia Commission adopted certain regulations governing P.U.R.1930C.

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ing the equipment, operation, and service of public automobiles, taxicabs, and busses operating for hire.

[December 30, 1929.]

ORDER of the Commission promulgating rules and regulations for the equipment and operation of public automobiles.

By the COMMISSION: This Commission being charged with the duty of regulating common carriers by motor vehicle within the District of Columbia, and having theretofore issued rules and regulations relative to motor busses operated over defined routes, and it appearing that similar rules and regulations for the equipment and operation of other automobiles for public use for the conveyance of persons or property within the District of Columbia are necessary, the Commission, on November 11, 1929, by its Order No. 800, tentatively adopted the following rules and regulations to become effective January 1, 1930, unless before then altered, amended, or repealed by the Commission. The Commission, after thirty days' notice, held a public hearing with respect to this tentative order, at which time all interested parties were heard and permitted to present evidence with respect thereto. It appearing from the evidence produced that some change in the tentative order is desirable, and that the information with respect to motor trucks and motor vans now available is not sufficient to warrant their inclusion in the regulations at this time:

Now, therefore, it is Ordered:

(1) That under authority of § 8 of the District of Columbia Appropriation Act approved March 4, 1913, creating the Public Utilities Commission, P.U.R. 1930C,

sion, the following rules and regulations for the equipment and operation of automobiles for public use for the conveyance of persons or property within the District of Columbia for hire, other than motor busses operated over defined routes, be and the same are hereby made and prescribed, and obedience thereto and compliance therewith are hereby required of, and enjoined upon, every individual, association, partnership, or corporation owning, operating, controlling, or managing any agency or agencies used in such service.

(2) That noncompliance with any of these regulations will constitute a violation of law, and subject the offending person, association, partnership, or corporation to the penalties prescribed in the law creating the Public Utilities Commission of the District of Columbia.

(3) That these rules and regulations shall take effect on February 1, 1930, and shall remain in full force until otherwise ordered by the Commission.

RULES AND REGULATIONS GOVERNING THE EQUIPMENT AND OPERATION OF MOTOR VEHICLES OTHER THAN VEHICLES SUBJECT TO ORDER NO. 711 OPERATED FOR HIRE IN THE DISTRICT OF COLUMBIA.

Definitions

Section 1.

(a) Wherever used in these regu-

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lations the term "motor vehicle" shall mean any automobile, motor cab, or motor bus operated for public use for the conveyance of persons or property within the District of Columbia for hire, other than motor busses operated over defined routes. (See this Commission's Order No. 711.)

(b) Wherever used in these regulations the term "Commission" shall mean the Public Utilities Commission of the District of Columbia.

(c) Wherever used in these regulations the term "company" shall be deemed to include any person, association, partnership, or corporation operating or proposing to operate any motor vehicle.

(d) The term "taxicab" when used in these regulations shall be deemed to include any and all motor cabs other than those used exclusively in livery service or exclusively in service for which the rate is fixed by the hour.

(e) For the purposes of these regulations the motor vehicles subject here-to are classified as follows:

Class A shall include motor cabs.

Class B shall include motor busses.

Equipment

Section 2.

(a) Every motor vehicle shall be equipped with a power plant adequate to propel the same when fully loaded over smooth, level pavement at a rate of speed of not less than 35 miles per hour.

(b) Every motor vehicle shall be equipped with a service brake so constructed and maintained as to enable the motor vehicle to be stopped on dry, smooth, level pavement, within a dis-

tance of 50 feet from a speed of 20 miles per hour.

(c) Every motor vehicle shall be equipped with an emergency brake which, in the event of the failure of the service brake required in paragraph (b) above, will enable the motor vehicle to be stopped on dry, smooth, level pavement within a distance of 75 feet from a speed of 20 miles per hour.

(d) Every motor vehicle shall be equipped with an electrically operated warning signal which will produce an abrupt sound adequate to warn of the approach of the motor vehicle, but not unnecessarily loud or discordant.

(e) Every motor vehicle shall be equipped with an electric lighting system sufficiently substantial and adequate to provide for reasonably brilliant lighting of the fixtures herein-after specified, and completely and properly fused.

(f) Every motor vehicle shall be equipped with the following means of illumination which shall be kept clean and in proper working order at all times:

Headlights: Not less than two headlights, affixed to the front of the motor vehicle, to be equipped with twenty-one candlepower bulbs and approved nonglare lenses, and so adjusted as to provide the maximum headlight without danger of blinding the operators of approaching vehicles.

Tail-light: One light mounted on the rear of the motor vehicle and arranged to show a red light, visible at a distance of 500 feet, to the rear and to illuminate with white light the rear registration tag.

Marker lights: Not less than one

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front marker light, equipped with blue or purple lens and mounted on the upper portion of the front of the body, and on Class B vehicles, not less than two rear marker lights, equipped with red lenses and mounted on the upper portion of the rear of the body, one as close as possible to each side of the body.

Body lights: Sufficient lights shall be provided in the interior of every motor vehicle to produce a well distributed illumination of the interior, platforms and steps. The interior lighting system of Class B motor vehicles, exclusive of special step and platform lights, shall provide at least five (5) rated candlepower for each interior seat space.

Destination sign lights: At least two (2) rated candlepower shall be provided for each square foot or fraction thereof of an illuminated destination sign area when motor vehicles are equipped with such signs.

(g) The lights prescribed in the above paragraph (f) shall be kept lighted in accordance with the following schedule:

Headlights and tail lights: When the motor vehicle is on the street not parked at the curb or is in motion between one-half hour after sunset and one-half hour before sunrise, during heavy fogs and at times of darkness due to storm.

Marker and destination sign lights: Between one-half hour after sunset and one-half hour before sunrise.

Body lights: At all times when the lack of such illumination may result in danger or discomfort to passengers.

(h) During the months of November to March, inclusive, every

motor vehicle shall be equipped with suitable heating apparatus. The temperature within any such motor vehicle in service shall be kept at or above 40 degrees, Fahrenheit, except, when the company is prevented from so doing by accident or other controlling emergency for which it is not responsible and which is not due to any negligence on its part.

(i) Every motor vehicle shall be so constructed as to reduce to a minimum the noise and vibration incident to its operation.

(j) Every motor vehicle in service shall be equipped with at least two doors, located on opposite sides or at opposite ends thereof. Any door not used regularly for entrance or exit shall be so constructed that it will remain securely fastened during normal operation, but may be readily opened by a passenger in case of emergency.

(k) Every motor vehicle shall be equipped with an adjustable rear vision mirror so installed as to enable the operator to obtain a reasonably clear view toward the rear.

(l) The gasoline tank of every Class A and Class B motor vehicle shall be located entirely outside of the body of the motor vehicle with an inlet for filling which shall permit filling from the outside exclusively. For the purposes of this order the body of the car is considered as that part above the chassis and behind the cowl.

(m) Every motor vehicle in service shall carry, in a manner authorized by the Commission, the trade name or the name of the operating company and a number which will serve to distinguish such vehicle from any other vehicle or vehicles operated by the same company.

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(n) Every Class B motor vehicle shall be equipped with suitable ventilating apparatus so constructed and arranged as to provide for adequate ventilation of the motor vehicle without admission of undue drafts, dust, rain, or snow.

(o) Every Class B motor vehicle in service shall be equipped with a fire extinguisher of the carbon-tetrachloride type having a capacity of at least one quart. Such extinguisher shall be kept filled with the proper liquid at all times, and shall be carried in a suitable rack and easily accessible to the operator.

(p) Every Class A and Class B motor vehicle in service shall be kept in a clean and sanitary condition, and shall be swept and dusted thoroughly at least once each day. At least once every seven days the interior woodwork, glass, and floor shall be cleansed thoroughly with suitable antiseptic solution.

(q) Every Class A and Class B motor vehicle shall be equipped with a standard speedometer properly installed, maintained in good working order, and exposed to view.

(r) Every motor vehicle and its appurtenances shall be kept in such condition of repair as may be necessary to provide for the safety of the public and for continuous and satisfactory operation, and to reduce to a minimum the noise caused by such operation.

(s) No Class A or Class B motor vehicle shall hereafter be placed in service in the District of Columbia until the plans and specifications have been submitted to and approved by the Commission.

(t) No material change in equip-

ment, plan, or arrangement shall be made on any Class A or Class B motor vehicle in service in the District of Columbia until the plans and specifications for such change have been submitted to and approved by the Commission.

Operation

Section 3.

(a) No motor vehicle shall be operated unless authority so to do shall have been obtained in writing from the Commission.

(b) No motor vehicle company shall begin or continue operations unless and until a schedule of its rates, fares, or charges has been filed with and approved by the Commission.

(c) No motor vehicle shall be operated unless the proper licenses therefor shall have been obtained.

(d) No motor vehicles shall be operated in a service where, for the convenience of the public, they are scheduled or booked to depart from or arrive at established stands, except in accordance with written time schedules approved by the Commission.

(e) Every motor vehicle shall be registered in accordance with the legal requirements of the District of Columbia for motor vehicles in general.

(f) No motor vehicle company which has been granted a right to operate shall add any motor vehicle to its system at any time without first securing authority therefor from the Commission.

(g) No motor vehicle shall be driven by any person who is less than eighteen years of age; who is addicted to the use of narcotics or intoxicat-

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ing liquor; who is not of good moral character; who is mentally deficient or physically defective to such an extent as to impair his ability to properly and efficiently operate the same; who is not experienced in operating motor vehicles and fully competent to carefully safeguard and courteously operate such vehicles; or has not obtained an operator's permit required by law for drivers of motor vehicles.

(h) Operators of Class A and Class B motor vehicles shall be identified by a number attached to the operator's cap, or by a card displayed in full view of the passengers bearing the operator's name in letters of sufficient size to be easily read.

(i) The operation of motor vehicles shall be conducted in accordance with the laws of the District of Columbia, and with due regard for the safety, comfort, and convenience of passengers, or for the safe and careful transportation of property, and the safety of the general public; and all reasonable efforts shall be made to promote such safety at all times and under all conditions.

(j) No motor vehicle shall be loaded to such an extent, or in such a manner as to interfere with the free movement of the operator thereof, or so as to interfere with his vision through any portion of the front window or windshield.

(k) Spitting on the floor, sides, or any other portion of any Class A or Class B motor vehicle is prohibited.

(l) No motor vehicle shall be operated at a rate of speed greater than is reasonable and proper, having regard for pertinent police traffic regulations, the conditions of traffic and of the

highways; or in such manner or condition as to endanger the safety of passengers, pedestrians, vehicles, or the property of others.

(m) All operators of motor vehicles shall, in the use of the public streets, give careful attention to the rights and needs of the public generally using such streets at the same time.

(n) Operators of Class A or Class B motor vehicles in general must not receive or discharge passengers in the street, but whenever possible shall pull up to the sidewalk, or in the absence of sidewalk, to the extreme right side of the road, and there receive or discharge passengers.

(o) Except as otherwise specified or prescribed in these rules and regulations, every motor vehicle shall be operated in compliance with the Traffic and Motor Vehicle Regulations of the District of Columbia.

(p) There must be displayed in the front end of every motor vehicle clearly visible from without and from within a certificate issued by this Commission showing that the operation of said motor vehicle has been authorized by the Commission and that the person, firm or corporation operating said vehicle has complied with the Commission's regulation as to proof of financial ability to respond in damages for injuries caused by the operation of such motor vehicle.

Rates, Fares, and Charges.

Section 4.

(a) No motor vehicle operator or company shall charge, demand, or collect any rate, fare, or charge for any service rendered, other than the rate, fare, or charge prescribed or ap-

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proved by the Commission for such service.

Taximeters.

Section 5.

(a) All taxicabs shall be equipped with taximeters.

(b) This Commission's regulations governing the use and testing of taximeters as fully set forth in Order No. 710, June 7, 1928, be and are hereby made to apply in full force and effect to all Class A motor vehicles.

Reports.

Section 6.

(a) Every company shall submit to the Commission on blank forms prepared and furnished by it, within one day of the occurrence, a report of each collision or accident resulting in injury to any person, giving the name and address when known.

(b) Accurate records of receipts from operation and operating and other expenses and of capital expenditures shall be filed with the Commission in accordance with law.

Information on Accidents.

Section 7.

(a) Any motor vehicle concerned in or involved in an accident or collision rendering such motor vehicle unfit for operation in its intended service, or which results in serious personal injury or fatality, shall be immediately taken to the garage or shop of the company and held not more than twenty-four hours after notice of such accident or collision has been given to the Commission. No repairs or adjustment shall be made to any such motor vehicle during such twenty-four hours without

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permission from the Commission or its authorized representatives.

(b) Upon request of the Commission, orally or in writing, the names and addresses of any person or persons killed or injured, and any other information which the company may possess relative to any accident, shall be furnished to the Commission.

Penalties

Section 8.

(a) Any company, or any officer or agent or other person acting for or employed by such company violating any portion of this or any other order of the Commission shall be subject to the penalties prescribed in § 8 of the Act of Congress, approved March 4, 1913, creating said Commission.

Proof of Financial Responsibility

Section 9.

(a) No person, firm, or corporation shall operate any motor vehicle, as herein defined, unless and until the person, firm, or corporation shall:—

(1) File with the Commission a sworn statement showing the ability of the person, firm, or corporation to pay all damages which may result from any and all accidents due to the negligent use or operation of such vehicle; or

(2) File with the Commission security, indemnity or a bond guaranteeing the payment by the person, firm, or corporation of all such damages; or

(3) Insure to a reasonable amount the person's, firm's, or corporation's liability to pay such damages; and unless the person, firm, or corporation shall

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(4) File with the Commission, as often as the Commission shall in writing demand, in form prescribed by the Commission, evidence of the person's, firm's, or corporation's compliance with the provisions of this section.

No motor vehicle company shall contract for insurance covering their operation in the District of Columbia for a less period than twelve months unless authorized in writing by the Commission.

The sworn statement of financial ability, security, indemnity, bond, or

amount of insurance shall be subject to the approval of the Commission.

Failure to make satisfactory proof of ability to respond in damages for injuries caused by the operation of motor vehicles or failure to maintain such ability at all times shall be deemed cause for prompt cancellation of the certificate of the Public Utilities Commission authorizing operation.

All previous orders of the Commission inconsistent with the provisions contained in this order are hereby repealed.

UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

City of Louisville et al.

v.

Louisville Railway Company

(— F. (2d) —.)

Constitutional law — Confiscation — Jurisdiction of Federal court — Fares fixed by city.

A contention that a Federal court has no jurisdiction to enjoin the enforcement of confiscatory fares fixed by a Kentucky city, because they are not the result of state action, is without merit when based upon the claim that they were fixed pursuant to a franchise agreement created by the city in its proprietary capacity and that no rate powers have been delegated to the city by the state.

[March 22, 1930.]

A PPEAL by a city from a decree of a Federal District Court restraining, upon application by a street railway, the enforcement of an ordinance of the city fixing fares; affirmed.

HICKENLOOPER, Circuit Judge:
The Louisville Railway Company filed its bill in the district court seeking an injunction against the enforce-
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ment of what is claimed to be a confiscatory rate of fare fixed by the general council of the city of Louisville. The only question presented by

UNITED STATES CIRCUIT COURT OF APPEALS

the present appeal is that of the jurisdiction of the Federal courts as such. Equity jurisdiction of the subject-matter of the litigation is conceded. As of August 25, 1922, after other grants and prolonged litigation, the Louisville Railway Company surrendered all its various franchise rights within the city of Louisville, and the general council passed an ordinance granting a new franchise, fixing a maximum fare of 7 cents and providing for periodic adjustment of fares, varying inversely with the return upon the common capital stock of the company. On September 2, 1926, the franchise was further modified by enactment of another ordinance, fixing the fare at 7 cents for a period of two years, providing for general valuation of the properties of the company and for subsequent determinations by the general council of the city, from time to time, of rates of fare at such figures as would yield a just and reasonable return upon the value of the railway property used and useful in the service of transportation.

The company continued to operate under the 1926 ordinance for approximately three years, while the valuation of its property was carried to completion. By ordinance adopted June 14, 1929, such valuation was fixed at \$18,000,000, 6 per cent declared a fair return, and 7 cents fixed as the fare necessary to yield this return. Thereupon the present action was begun, and upon hearing of motion for interlocutory injunction the district court overruled a motion to dismiss for lack of Federal jurisdiction, fixed the valuation of the property at \$20,00,000 and a fair return

at 8 per cent, and determined that a 10-cent fare was necessary to yield such return. As already stated, the city appeals only upon the question of jurisdiction.

Briefly stated, the contention of the appellant is that the power of rate regulation has never been delegated by the commonwealth to the general council of the city; that the exercise by the city of the power of valuation and rate determination can therefore be justified only upon the ground that such power was created or conferred by the franchise ordinance contract; and that the alleged confiscatory rates were therefore not the result of *state action*, but solely of action by the municipality in a proprietary capacity, which would not create Federal jurisdiction under the Fourteenth Amendment. *Memphis v. Cumberland Teleph. & Teleg. Co.* (1910) 218 U. S. 624, 54 L. ed. 1185, 31 Sup. Ct. Rep. 115; *Hamilton Gas, Light & Coke Co. v. Hamilton* (1892) 146 U. S. 258, 36 L. ed. 963, 13 Sup. Ct. Rep. 90; *Louisville v. Cumberland Teleph. & Teleg. Co.* (1907) 84 C. C. A. 151, 155 Fed. 725.

It must be conceded that the power to control rates of public utilities rests primarily and exclusively with the General Assembly, unless delegated in express terms to a specially constituted administrative tribunal, or to a political subdivision of the state. *Winchester v. Winchester Water Works Co.* (1920) 251 U. S. 192, 64 L. ed. 221, 40 Sup. Ct. Rep. 123; *Louisville v. Louisville R. Co.* (C. C. A. 1922) 281 Fed. 353; 3 Dillon, *Municipal Corporations* (5th Ed.), § 1325.

The same is true as to the grant

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of franchise rights to use the public highways of the state for the conduct of such public utility business. This latter power, over the granting of franchises, has been delegated to the cities of Kentucky by § 163 of the Constitution of 1891, and it has been held by the court of appeals of Kentucky that, in granting a franchise, it is proper for the city "to provide the conditions under which, and the rates for which, the service should be rendered." *Campbellsville v. Taylor County Teleph. Co.* (1929) 229 Ky. 843, 849, P.U.R.1929D, 547, 18 S. W. (2d) 305. This, however, is not an exercise of the rate-making powers of the state, nor does it necessarily create a contract bartering away the power of rate control residing in the commonwealth. It fixes a contract maximum; not a contract minimum below which service may not thereafter be required by properly constituted authority. *Noblesville v. Noblesville Gas & Improv. Co.* (1901) 157 Ind. 162, 169, 60 N. E. 1032; *St. Cloud Pub. Service Co. v. St. Cloud* (1924) 265 U. S. 352, 363, 68 L. ed. 1050, 44 Sup. Ct. Rep. 492.

This view suggests the rather obvious distinction between the power of rate regulation, as such; the power to contract for a fixed rate over a definite term, which is the equivalent of a surrender of the rate-making power for such term and will be supported only by definite and express enactment (*Railroad Commission v. Los Angeles R. Corp.* decided Dec. 2, 1929, 280 U. S. 145, 74 L. ed. —, P.U.R.1930A, 1, 50 Sup. Ct. Rep. 71); and the power to fix a maximum rate as a condition to the enjoyment of a franchise. In each instance the

municipality acts under delegated state power, although the several powers differ essentially in nature, scope and effect of exercise thereof. It is the contention of appellant that the city could act only by virtue of its power to impose conditions upon the grant of a franchise; that this action was taken in its proprietary capacity and was solely municipal in character, and that specific delegation of the power of rate regulation must be found in order to give to the rate determination the color of state action.

The fallacy of appellant's position lies in the assumption that the action of the city was in a purely proprietary and municipal capacity, and not under delegation of authority primarily vested in the state. While we have searched the constitution and laws of the commonwealth of Kentucky and find no express delegation to the city of the power of rate regulation, as such, yet it is conceded that the power to grant or withhold a franchise to use the public ways, and to impose conditions as to such use, has been delegated. This power, no less than the power of rate control, finds its origin in the supreme legislative power of the state. *Wright v. Nagle* (1880) 101 U. S. 791, 794, 25 L. ed. 921; *California v. Central P. R. Co.* (1888) 127 U. S. 1, 40, 32 L. ed. 150, 8 Sup. Ct. Rep. 1073. The franchise comes from the state through power delegated to the city. *Owensboro v. Cumberland Teleph. & Teleg. Co.* (1913) 230 U. S. 58, 65, 67, 57 L. ed. 1389, 33 Sup. Ct. Rep. 988. Thus, to the extent that the right of subsequent valuation and rate determination is validly reserved as a condition of and concomitant to

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the granting of a franchise, the city purports to act, and is acting, in the exercise of delegated state power. When, subsequently, this reserved power is exercised, the source and validity of such action must by relation also be found in, and ascribed to, the delegation of state power in the matter of granting the franchise.

The constitutional question frequently presented is whether the subsequent legislation impairs the obligation of an earlier contract; or it may be, as here, whether the complainant is being deprived of its property without due process of law; but in either event a Federal question is presented where the legislation complained of is enacted as an adjunct to one or another of the several types of delegated sovereign authority. The fact that the jurisdiction of the Federal courts is so seldom questioned in these cases is in itself persuasive of the existence of jurisdiction. It is only when it affirmatively appears upon the record that the city acted in a purely proprietary capacity, and without a delegation of authority from the state, that jurisdiction is held to be lacking. Compare *Memphis v. Cumberland Teleph. & Teleg. Co.* (1910) 218 U. S. 624, 630, 54 L. ed. 1185, 31 Sup. Ct. Rep. 115, and cases there cited.

If needed, another justification for the retention of jurisdiction is found in the fact that upon the present record the complainant below honestly urges a real and substantial claim of violation of the Federal Constitution. The contention that the city is exercising delegated state powers, either of rate control or in the enforcement of franchise conditions, is urged in P.U.R.1930C.

good faith, and this claim is not so wholly lacking in merit as to afford no basis for jurisdiction of the Federal courts, whether the contention be ultimately sustained or denied, or whether, in fact, the Federal question be decided at all. *The Fair v. Kohler Die & Specialty Co.* (1913) 228 U. S. 22, 25, 57 L. ed. 716, 33 Sup. Ct. Rep. 410; *Greene v. Louisville & I. R. Co.* (1917) 244 U. S. 499, 508, 61 L. ed. 1280, 37 Sup. Ct. Rep. 673; *Louisville & N. R. Co. v. Rice* (1918) 247 U. S. 201, 203, 62 L. ed. 1071, 38 Sup. Ct. Rep. 429; *Columbus R. Power & Light Co. v. Columbus* (1919) 249 U. S. 399, 406, 63 L. ed. 669, P.U.R.1919D, 239, 39 Sup. Ct. Rep. 349, 6 A.L.R. 1648; *Davis v. Wallace* (1922) 257 U. S. 478, 482, 66 L. ed. 325, 42 Sup. Ct. Rep. 164; *Hart v. Keith Exchange* (1923) 262 U. S. 271, 273, 67 L. ed. 977, 43 Sup. Ct. Rep. 540.

That the claim made is one of substance is further emphasized by the fact, appearing from the adjudicated cases, that the city of Louisville and other municipalities of Kentucky have for many years assumed that they possessed the power of rate regulation. Reliance is placed upon § 2783 of the Kentucky Statutes, applicable to Louisville, providing: "The general council shall have power to pass, for the government of the city, any ordinance not in conflict with the Constitution of the United States, the Constitution of Kentucky and the statutes thereof." This general provision lacks expression of an intent to delegate that authority which may only be delegated by express provision, and is not to be construed, we think, as including the

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power of rate control, but only as a delegation of such authority as is ordinarily exercised by municipalities in the conduct of their local affairs. Compare: Charleston Consol. R. & Lighting Co. v. City Council (1912) 92 S. C. 127, 75 S. E. 390; Charles Simons Sons Co. v. Maryland Teleph. & Teleg. Co. (1904) 99 Md. 141, 57 Atl. 193; United Fuel & Gas Co. v. Commonwealth (1914) 159 Ky. 34, 37, 166 S. W. 783; St. Louis v. Bell Teleph. Co. (1888) 96 Mo. 623, 10 S. W. 197; Kalamazoo v. Titus (1919) 208 Mich. 252, 175 N. W. 480.

But it is insisted that this court is bound by the decisions of the court of last resort of Kentucky, construing its constitution and statutes, and defining the extent of the powers of its municipalities. This may be conceded. It is then said that in at least four instances the court of appeals of Kentucky has distinctly found the power of rate regulation to be vested in Kentucky municipalities. The cases relied upon are Gathright v. Byllesby & Co. (1913) 154 Ky. 106, 157 S. W. 45; Johnson County Gas Co. v. Stafford (1923) 198 Ky. 208, P.U.R. 1923C, 249, 248 S. W. 515; Poggel v. Louisville R. Co. (1928) 225 Ky. 784, 10 S. W. (2d) 305; and Kentucky Cab Co. v. Louisville (1929) 230 Ky. 216, 18 S. W. (2d) 992. While there is language in the opinions of these cases seemingly recognizing a power of rate regulation in the city, this issue was directly raised in none, no statutory justification for the exercise of this power is referred to, and in none do the facts warrant an extension of the doctrine of Campbellsville v. Taylor County Teleph. Co. (1929) 229 Ky. 843, P.U.R. 1929D, 547, 18

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S. W. (2d) 305, that in granting a franchise it is proper to impose conditions. The expressions in these cases must, therefore, be considered no more than dicta upon the question of the existence of an independent power of rate regulation. We are not inclined to rest our decision upon the finding that the power of rate regulation, *per se*, has in fact been delegated to the cities of Kentucky, but these dicta, and § 2783, lend color to the substantial and debatable character of the claim that the city acted in the exercise of such delegated state powers. That the case presents a real and substantial question under the constitution is enough.

It thus becomes unnecessary to decide the strongly-urged question of application of the doctrine of Home Teleph. & Teleg. Co. v. Los Angeles (1913) 227 U. S. 278, 288, 57 L. ed. 510, 33 Sup. Ct. Rep. 312, that "where a state officer under an assertion of power from the state is doing an act which could only be done upon the predicate that there was such power, the inquiry as to the repugnancy of the act to the Fourteenth Amendment cannot be avoided by insisting that there is a want of power." Doubtless the general council and officers of the city believed the power of rate regulation to have been delegated to the city, and acted upon this belief, but that action might also have been predicated upon the power reserved in the franchise, and not solely upon the delegation of the power of rate control, *per se*. Upon either view, as we have seen, a Federal question is presented.

The judgment of the district court is affirmed.

INDIANA PUBLIC SERVICE COMMISSION

INDIANA PUBLIC SERVICE COMMISSION

Northern Indiana Telephone Company
v.
Whitley County Telephone Company

[No. 9948.]

Service — Commission jurisdiction — Restoration of physical connection.

The Commission has full jurisdiction to order the restoration of a physical connection of telephone lines, regardless of any evidence of convenience and necessity involved, when one company has arbitrarily discontinued the connection.

[SINGLETON, Commissioner, dissents.]

[January 24, 1930.]

PETITION of one telephone company for the restoration of physical connections with another; petition granted.

APPEARANCES: Carl H. Mote, Attorney, Indianapolis, L. C. Loughry, Attorney, Indianapolis, Samuel J. Mantel, Attorney, Indianapolis, W. A. Hough, Attorney, for petitioner; Frazer and Headley, Attorneys, Warsaw, Goodrich, and Emison, Attorneys, Indianapolis, for respondent.

ELLIS, Commissioner: On October 29, 1929, the Northern Indiana Telephone Company filed with the Public Service Commission of Indiana its petition for restoration of toll circuit, said petition, omitting caption and signatures, is as follows:

"The Northern Indiana Telephone Company represents and shows that it is a corporation organized and existing under and by virtue of the laws of the state of Indiana and is a public utility within the meaning of the Shively-Spencer Utility Commission Act, owning and operating a number

of telephone exchanges in Northern Indiana, including particularly an exchange at Bippus.

"Complainant further represents and shows that the Whitley County Telephone Company is a corporation organized and existing under and by virtue of the laws of the state of Indiana and is a public utility within the meaning of the Shively-Spencer Utility Commission Act and owns and operates, among others, a telephone exchange at Columbia City, Indiana.

"Your complainant shows that prior to October 1, 1929, it owned and operated an exchange at a place commonly known as Luther, situated between the village of Bippus and Columbia City and near the Huntington-Whitley county line; that by authority of your Honorable Body, complainant was authorized to abandon its exchange at Luther and to serve its Luther subscribers from its exchange

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at Bippus; that its exchange property in the Bippus-Luther exchange area was completely rebuilt and that prior to October 1, 1929, service to its former Luther subscribers was established from its exchange at Bippus.

"Your complainant further shows that prior to October 1, 1929, its exchange at Bippus was connected with its exchange at Luther and with the exchange of the defendant named herein at Columbia City with a grounded toll circuit; that some time prior to October 1, 1929, the defendant, Whitley County Telephone Company, disconnected this toll circuit entirely and that no service has been possible over said circuit since the time of said disconnection.

"Your complainant further shows that of said toll circuit it owned that portion between its Bippus exchange and its former Luther exchange, the air-line distance between said points being $4\frac{1}{2}$ miles, and that it owned said toll circuit from the point where its Luther exchange was formerly located to a point 5.4 miles directly east of the point where said Luther exchange was formerly located; that the disconnection of said circuit by the Whitley County Telephone Company, defendant herein, was made at a point beyond that which marked the limit of ownership of said circuit by the Northern Indiana Telephone Company.

"Your complainant represents and shows finally that said destruction of said toll circuit from its Bippus exchange to the Columbia City exchange of the defendant herein was without authority of your Honorable Body and without the consent of authority of your complainant herein; that the

effect of said action by the defendant herein was to deprive your complainant of its property right in said Bippus-Columbia City toll circuit and to render toll service over said circuit from the Bippus-Luther exchange area to Columbia City and to points beyond Columbia City impossible, all of which is contrary to law and was without authority from your Honorable Body.

"Wherefore complainant prays your Honorable Body for an early hearing and determination of the matters herein set forth and for an order directed to the Whitley County Telephone Company ordering and directing said company, the defendant herein, to restore said connection of said toll circuit at the point where said circuit was unlawfully severed."

The matter was set for hearing at the rooms of the Commission, Indianapolis, December 16, 1929, at 10 o'clock A. M. The hearing was held at the time and place above indicated, with the appearances above noted.

Counsel for the Whitley-County Telephone Company filed a motion to dismiss the petition, questioning the jurisdiction of the Public Service Commission over the subject-matter of the petition; said motion, omitting caption and signatures, is as follows:

"Comes now Whitley County Telephone Company, respondent in the above entitled matter and moves the Honorable Commission to dismiss complaint herein because said complaint does not state facts sufficient to confer upon the Public Service Commission of the state of Indiana jurisdiction in the premises in that said complaint fails to allege:

"1. That there is any duty upon

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Whitley County Telephone Company, respondent herein, to maintain the connection in question.

"2. That adequate service is not being maintained with existing facilities.

"3. Or that there is any public interest involved in the controversy between the parties.

"Wherefore, respondent asks Public Service Commission of Indiana to dismiss said petition in line."

This motion was taken under advisement by the Commission. The evidence showed that the petitioner formerly operated an exchange at Luther situated between Bippus and Columbia City and near the Huntington-Whitley county line; that by authority of this Commission the petitioner was authorized to abandon this exchange at Luther and to serve its Luther subscribers from its exchange at Bippus; that prior to October 1, 1929, its exchange at Bippus was connected with its exchange at Luther and with the Whitley County Telephone Company at Columbia City with a grounded toll circuit. That of said toll circuit the petitioner owned the portion between its Bippus exchange and its former Luther exchange and from the point where its Luther exchange was formerly located to a point 5.4 miles directly east of the point where said Luther exchange was formerly located. That from this point to Columbia City, the Whitley County Telephone Company owned said toll circuit.

The evidence further showed that some time prior to October 1, 1929, it became impossible to put through calls over this circuit, on account of the cutting of the wire or disconnec-

tion thereof at some point. The petition alleges that this toll circuit had been disconnected by the respondent, Whitley County Telephone Company.

At the hearing the witnesses were unable to give any definite testimony about this matter although the controversy had been under discussion by the parties for some time. The manager of the Columbia City exchange, appearing as a witness for the respondent, indicated that he did not know whether the line had been cut or disconnected and that if it had been disconnected that he did not know at what point. Witnesses for the petitioner testified that the line was not disconnected at any point in the portion of the line owned by the petitioner, but these witnesses were unable to give any information as to the exact location of the point where the line had been disconnected. The presiding Commissioner indicated that a member of the engineering staff of the Public Service Commission would be sent to make an inspection of this circuit to determine the facts and this arrangement was agreed to by all parties.

Under date of January 13, 1930, the Commission has received the report of its engineer, Mr. W. F. Lebo, in regard to this matter, as follows:

"Pursuant to the request of Mr. Ellis, I made an inspection on January 7th of the grounded toll line which extends from Luther west along the county line to the state road, then north along the state road to Columbia City. From Luther to the state road this line is owned by the Northern Indiana Telephone Company of North Manchester and that part along the state road to Columbia

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City is owned by the Whitley County Telephone Company of Columbia City.

"I find that the exchange at Luther has been abandoned and the subscribers around Luther connected to the Bippus exchange. From Bippus north to the county line, a distance of about 4 miles, the Northern Indiana Telephone Company has built a new line, and from this point east to Luther the original line has been rebuilt and put in good condition. From Luther east to the state road the line is in very poor condition. Many poles are in bad condition, many cross arms are broken, insulators and pins have been pulled loose from the cross arms and the wires are in poor condition. This toll line was checked from Bippus to the junction point and it was found to be clear. A test set was connected at the junction point and I was able to talk to the Bippus operator. However, I was unable to get the Columbia City operator.

"At the junction point on the state road I was met by Mr. Howell of the Whitley County Telephone Company. In going over the line along the state road to Columbia City I found one span of this toll line cut out a short distance south of Columbia City where a temporary line had been built around the construction of a new highway bridge. Mr. Howell explained this as follows: Shortly before this temporary line was built, the operator told him that this toll line was dead. In trying to locate the trouble he called over another toll line and was told by an operator of the Northern Indiana Telephone Company that the Luther exchange had been abandoned. Shortly after this

he put in the temporary construction around the highway bridge and since this line was not in use, it was not connected up.

"I found this line also disconnected on the main frame in the exchange. Mr. Howell explained this as follows: This line became crossed in the cable with a common battery line and was causing trouble and since the line was not in use, he disconnected it from the switchboard."

From the report it appears that this toll circuit has been disconnected at two points within the portion owned by the Whitley County Telephone Company, namely, at a point a short distance south of Columbia City and also at the switchboard in the Columbia City exchange.

Counsel for the respondent requested at the close of the hearing, time to file a brief concerning this cause and permission was granted by the Commission, it being stated that a reasonable time would be allowed for the filing of said brief.

Due to the illness of one of the attorneys for the respondent the time for filing of this brief was extended by the Commission, and the brief was filed on January 16, 1930.

On January 21, 1930, the petitioner filed a reply brief, calling attention to the delay in the filing of the original brief by respondent, as pointed out above. However, this delay was with the approval of the Commission, on account of the illness of counsel.

On January 24th, the respondent filed a reply brief. The brief of the respondent deals entirely with the question of the jurisdiction of the Commission and a request is made that in the event the Commission

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should overrule the motion to dismiss and assume jurisdiction of this cause, that opportunity be given the respondent to file a second brief on the merits of the case. The Commission has given careful attention to the brief raising the question of the jurisdiction of the Commission in this matter. The point stressed in the brief apparently is the argument that the Commission cannot order a physical connection without a showing of public convenience and necessity. It is true that there is little evidence as to the public convenience and necessity of the toll circuit involved in this record.

However, the matter of public convenience and necessity in regard to this toll circuit was established when the circuit was built and the physical connection made. There has been no application to the Commission for authority to discontinue this toll circuit on the ground that public convenience and necessity no longer require its operation. The question before the Commission is whether one telephone company may arbitrarily discontinue a physical connection already established and over such a question the Commission is of the opinion that it has jurisdiction. The motion to dismiss, therefore, will be overruled.

The Commission sees no reason to defer decision on the merits of this cause, until further briefs have been filed. The facts necessary for decision of this matter are set out in the report of Mr. Lebo, concerning which there can be little dispute since he was accompanied on this inspection trip by representatives of the petitioner and respondent.

The Commission, in view of the report of its engineer, is of the opinion that the Whitley County Telephone Company or its agents, disconnected the toll circuit in question, thereby destroying an already established physical connection; that the Whitley County Telephone Company obviously, by the disconnecting of this toll circuit, made it impossible to furnish service over said toll circuit.

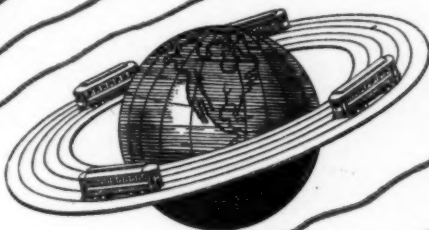
In this connection the Commission calls attention to an opinion of the Indiana appellate court:

"But there is good authority for the position that, when such a physical connection has been voluntarily made, under fair and workable arrangement, and guaranteed by contract and the continuous line has come to be patronized and established as a great public convenience, such connection shall not in breach of the agreement be disconnected by one of the parties. In such cases the public has an interest in the arrangement and its rights must be given due consideration." *McCardle v. Akron Teleph. Co.* (1928) 87 Ind. App. 59, P.U.R.1928C, 649, 652, 160 N. E. 48.

The Commission being fully advised in the premises is of the opinion that the prayer of the petition should be granted and it will be so ordered.

MCCARDLE, Chairman, and WEST, Commissioner, concur.

SINGLETON, Commissioner, dissenting: I am for the provisions of the order, but except to the failure of the Commission to give respondents time to file brief on the merits of the case before promulgating order.



the ever growing circle



—the ever growing circle
of friends

—the familiar faces that greet us now
and again through the busy decades

—the increasing respect for those who
are growing up in the Electric Rail-
way Industry

—the accumulation of pleasant memories

—the appreciation of the good will and
cooperation of associates.

These are real compensations to all
of us who have worked together over
a period of years.

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"Serve the Public WELL and TRULY"

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Operating so efficiently and intelligently that we may be able by improved methods and increased sales to reduce unit costs and consequently from time to time lower prices;

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This is the ideal toward which all business should strive. It is the ideal toward which the electric light and power industry is striving.

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Editor, Henry C. Spurr	Rochester, N. Y.
Managing Editor and Editorial Director, Kendall Banning	Washington, D. C.
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Henry C. Spurr, Editor.

Sworn to and subscribed before me this 21st day of March, 1930.

Elizabeth L. Shultz.

(My commission expires March 31, 1931.)

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Service is being supplied to approximately 1,278,000 electric and gas customers. These customers required, for the 12 months ending April 30, 1930, an output of more than 6,348,000,000 kilowatt hours of electricity and 9,776,000,000 cu. feet of gas. A total of 3,082,000 horsepower in electric generating capacity is available for public utilization. The daily gas manufacturing capacity totals 58,000,000 cu. feet.

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THE FEDERAL Government is engaged in a program of public building development in Washington of great magnitude and beauty. This Company is compelled to vacate its office and operating building site to accommodate the Government's requirements, and this fact, added to sound business conditions existing in Washington, necessitates the selection of a new site and a consequent increase in office building and operating plant facilities.

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POTOMAC ELECTRIC POWER CO.

Wm. F. Ham, President

WASHINGTON, D. C.

From the minutes of a special meeting of the directors of Mitten Management, Inc., held after the death of Thomas E. Mitten on October 1, 1929.

. . . . Now therefore be it resolved that we, as well for ourselves as for the multitudes of others in city, state and nation who drew from Thomas E. Mitten help, guidance, leadership and inspiration, do here record the common and overwhelming loss to us and to our times through his sorrowful death.

That we here express for ourselves and for all whom he has served and led to better things, our understanding, devotion and loyalty to his great ideals and to the works so far advanced by him in their achievement:

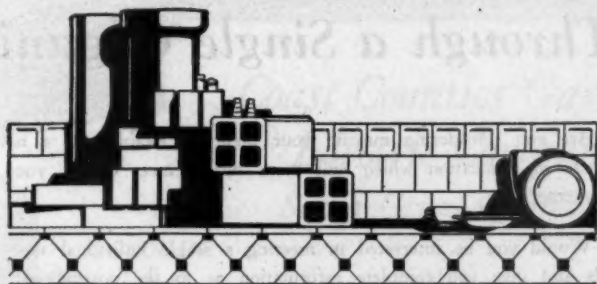
That for ourselves, his co-directors, and for all others touched by his life and influence, whether as manager, owner or employe, we here resolve to go forward with the labors from which death has removed him, just as he had selected, taught and welded us to do and knowing as we do that, though he is taken, his inspiration cannot be taken from us



MITTEN MANAGEMENT, INC.
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TO SUPPLY THE WORLD
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If the whole ceramic industry moved to Georgia, the clay from one Georgia county alone would supply its sedimentary kaolins, at the present rate of consumption, for the next six hundred years.

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Thus, from a plant enjoying the economies of Georgia location it is possible to serve a wide and rich market with goods whose quality compares favorably with wares of imported clays, at a price well below similar goods from other sections.

Georgia is richly endowed. Her natural resources and production advantages offer tremendous opportunities for a widely diverse group of industries, such as Paper and Pulp, Furniture, Rubber, Full-fashioned Hosiery, Textile and many more, which have unusual profit possibilities.

We will gladly supply the detailed background of these statements on request. Write Industrial Department, Georgia Power Company either at the New York office, 20 Pine street, or the home office, Electric building, Atlanta, Georgia.

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COMPANY

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Would you be interested in meeting a single individual who can diagnose your needs and give you complete information as to the possibilities for your particular business in over 800 communities embracing nine States?

The American Gas and Electric Company's subsidiaries serve a vast territory in Indiana, Kentucky, Michigan, New Jersey, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia which is tied together with one of the finest interconnected electric systems in the world, furnishing power from modern steam and hydro electric plants whose aggregate capacity is 1,475,000 horse power.

Throughout this territory you will find an adequate dependable supply of electric power—the first requisite of industry today. Somewhere in the system may exist the ideal location for your business which combines all other essential factors.

An industrial bureau is maintained at 30 Church Street, New York, to assist manufacturers desirous of locating in the territory. Your requests for confidential reports should be addressed to the Commercial Department.

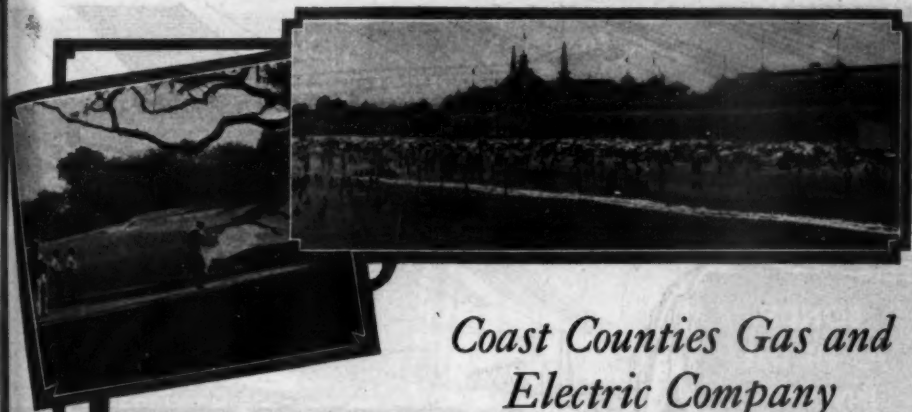
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Atlantic City Electric Company
Indiana General Service Company
Indiana & Michigan Electric Company

Kentucky and West Virginia Power Company, Inc.

Kingsport Utilities, Inc.
The Ohio Power Company
The Scranton Electric Co.
Wheeling Electric Company



Coast Counties Gas and Electric Company Santa Cruz, California

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The Management of the Coast Counties Gas and Electric Company extends to the visitors attending the N E L A Convention a hearty welcome to Santa Cruz—the Atlantic City of the Pacific Coast, with its beautiful bathing beaches and country clubs, excellent hotel facilities, wonderful drives and unsurpassed combination of seashore and mountain resorts.

In the backyard of Santa Cruz are the world renowned California Big Trees. Towering hundreds of feet in the air, these giant redwoods grow in the mountains and along the roadways throughout this entire area.

Santa Cruz is only 78 miles from San Francisco by excellent highway through beautiful country and can be reached by Southern Pacific Railway or bus.

Watsonville, only twenty miles away, is widely known as the apple and lettuce country. Only twenty miles further is Gilroy—the home of the prune and land of California fruits, which are now in the harvest season; and Hollister—the great cattle, grain and fruit land, with the ancient San Juan Mission nearby.

The entire organization of the Coast Counties Gas and Electric Company, assisted by the Chamber of Commerce, will do everything to make your visit a most enjoyable one.

Cordially yours,

J. B. WILSON, President,

COAST COUNTIES GAS & ELECTRIC CO.





LEVELING THE BARRIERS OF DISTANCE

ON wheels and on wings, over highways of steel or concrete and via airways, moves a vast phalanx of transportation—representing about sixty billion dollars of investment. The mobility of man and merchandise—once measured by the range of a horse and wagon—is now limited only to the capacity of steam, gasoline and electric vehicles.

The extent of this remarkable achievement is due not only to the abundance of inventive, engineering and directing ability available, but also to the wise use of the nation's financial resources. America's 249,000 miles of railroads with their costly equipment could not have been provided but for the twenty-five billion dollars which the public has invested in them. Likewise, the more than 40,000

miles of surface, subway and elevated electric lines—and the 660,000 miles of surfaced rural highways in the United States over which more than twenty-six million motor vehicles travel—were built largely with funds provided by investors. Thus the rewards of investment in constructive enterprises are far broader than the steady returns of interest or dividends.

In the building of highways and the financing of steam and electric transportation, the investment banking facilities of this house have served both borrowers and investors for many years. A list of typical companies engaged in transportation which Halsey, Stuart & Co. has served in this way, is contained in our booklet, *Choosing Your Investment House*. A copy will be mailed on request.

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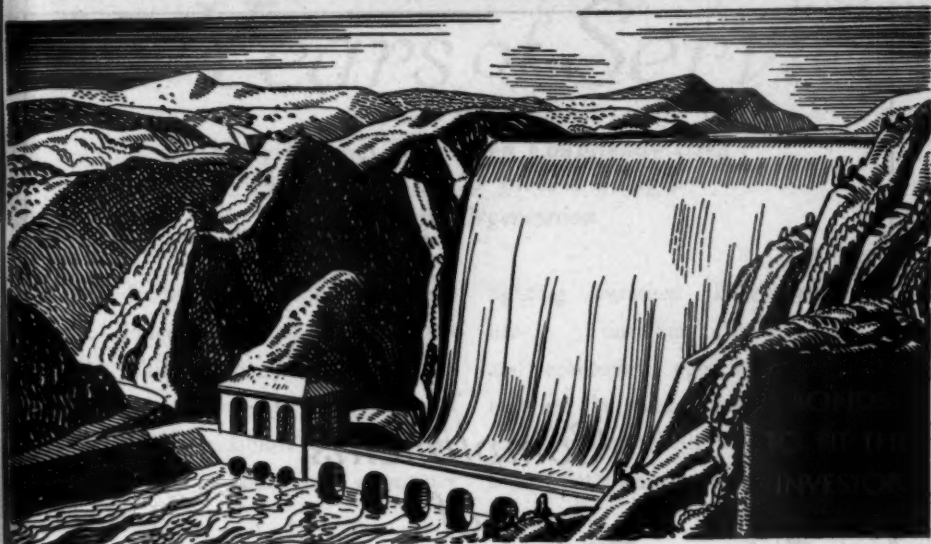
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The great hydro-electric plants of to-day have been made possible by business enterprise . . . by modern engineering . . . and by the capital supplied through modern financial organizations. Recent projects

for which Halsey, Stuart & Co. and associates have provided capital include the Dix River Dam in Kentucky, the highest rock filled power dam east of the Rockies; and the Saluda River Dam in South Carolina—to be the largest earth dam in the country.

Thus we have been privileged to render an essential and two-fold service—first, in loaning the money necessary for harnessing the power of great rivers and placing that power at the service of the public—and, second, in providing bonds of high quality for conservative investors.

For additional information about the investment opportunities in this and other branches of the Public Utility Industry write for our illustrated booklet, "The Strength of the Utilities."

HALSEY, STUART & CO.

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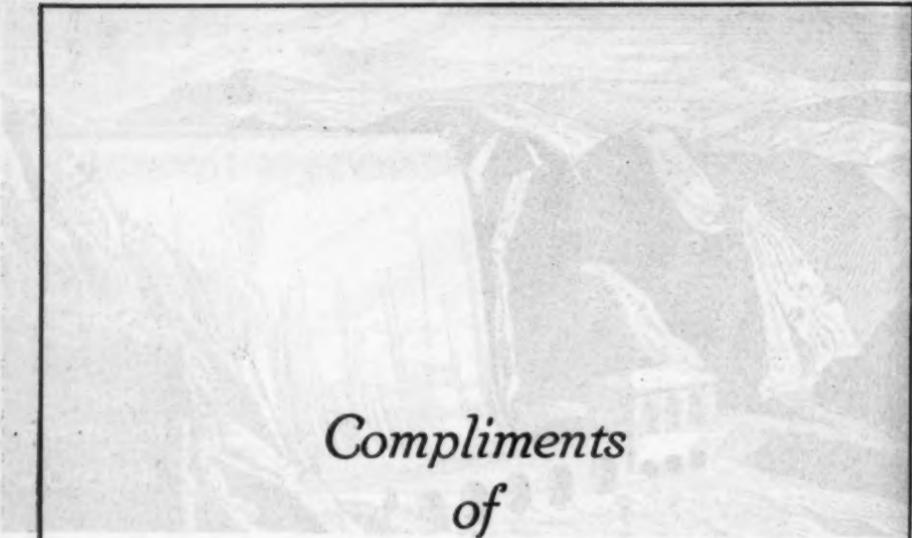
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Central States Utilities Corporation	Eastern New Jersey Power Company
Derby Gas & Electric Corporation	Laclede Power & Light Company
Interstate Power Company	Newport Electric Corporation
Greater London and Counties Trust Limited	

CONSOLIDATED CONDENSED INCOME STATEMENT

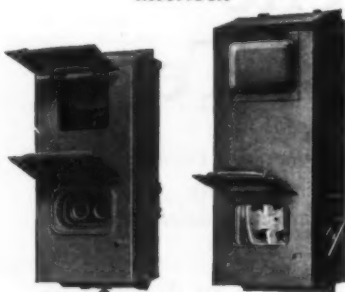
	Dec. 31, 1929	Dec. 31, 1928	Dec. 31, 1927
Gross Revenue (12 Months).....	\$52,348,686	\$43,240,584	\$27,645,209
Net Earnings of Operating Companies.....	23,593,845	19,733,590	14,473,892
Net Income After All Deductions.....	7,617,637	4,496,882	2,640,034





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Switch in off position
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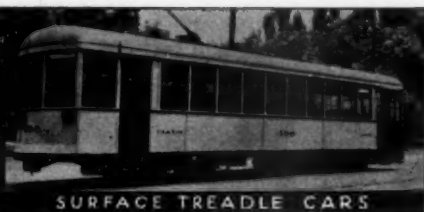


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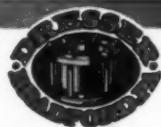
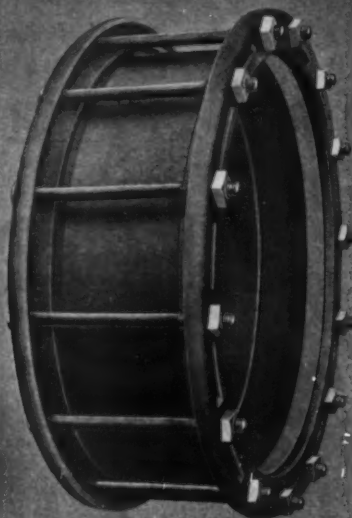
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Six and a half BILLION KILOWATT HOURS

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During the year 24,449 new electric customers were added to the lines, as a result of the growth of communities and extension of lines, particularly in rural sections. Thus Niagara Hudson Service is playing its part in the development of home, farm and industry of the Empire State.



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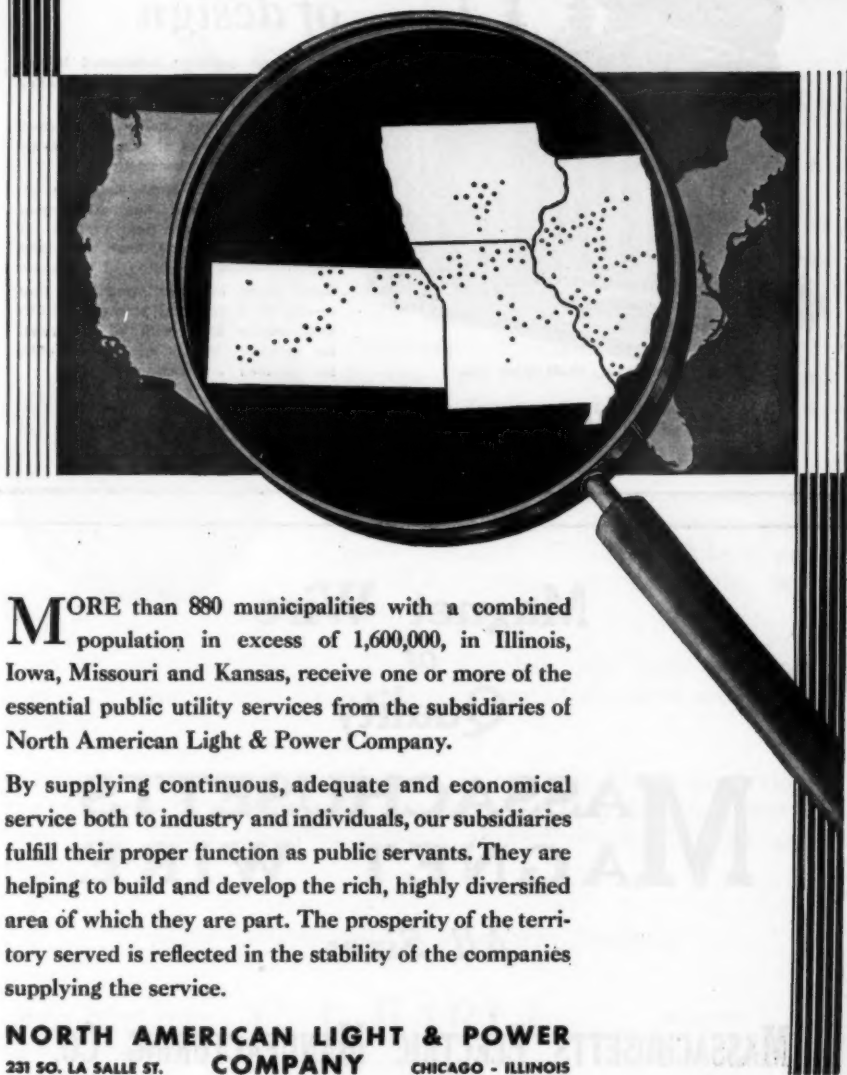
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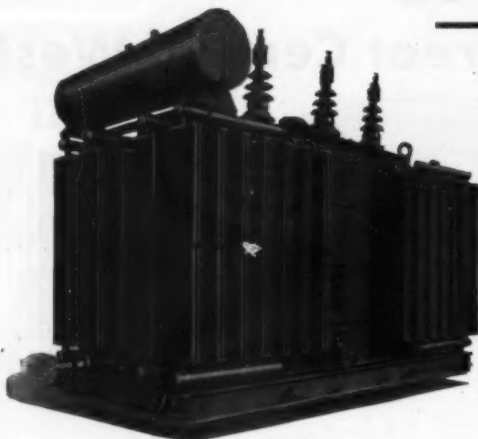
MORE than 880 municipalities with a combined population in excess of 1,600,000, in Illinois, Iowa, Missouri and Kansas, receive one or more of the essential public utility services from the subsidiaries of North American Light & Power Company.

By supplying continuous, adequate and economical service both to industry and individuals, our subsidiaries fulfill their proper function as public servants. They are helping to build and develop the rich, highly diversified area of which they are part. The prosperity of the territory served is reflected in the stability of the companies supplying the service.

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10,000 kva., 66,000/22,000 volt

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MAGNET WIRE**

All Sizes

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A name typifying the best . .



The name EARLL in the electric railway industry is associated exclusively with trolley catchers and trolley retrievers. Specializing on these two devices year after year, EARLL has produced devices which are superior in every detail.

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CORPORATION
Ltd.
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Congratulations, Cordial Greetings
and Best Wishes

to

Members, Officers, Delegates, Guests

of the

National Electric Light Association

in attendance at the

53rd Convention

at

SAN FRANCISCO, JUNE 16-20, 1930

* * *

HISTORY SHOWS NO CONFLICT OF INTEREST
BETWEEN OUR STOCKHOLDERS AND OUR CUSTOMERS

Year	Capital	Dividend Rate	Value of Rights	Domestic Rate
1901	\$ 1,400,000	7 per cent	\$25.00 per share	20c per K.W. Hr.
1904	1,600,000	8 " "	17.00 " "	16c " " "
1906	1,800,000	8 " "	19.00 " "	13c " " "
1908	2,400,000	8 " "	40.00 " "	11c " " "
1910	3,000,000	10 " "	26.00 " "	10c " " "
1913	3,600,000	10 " "	30.00 " "	9c " " "
1916	4,500,000	10 " "	46.00 " "	8c " " "
1918	6,000,000	8 " "	47.00 " "	8½c " " "
1920	8,250,000	10 " "	25.00 " "	10c " " "
1923	12,000,000	10 " "	14.00 " "	6c* " " "
1926	16,000,000	10 " "	25.00 " "	5½c* " " "
1927	18,000,000	10 " "	40.00 " "	5c* " " "
1928	†18,000,000	10¼ " "	25.00 " "	4c** " " "
1929 (See note)	21,000,000	11 " "	18.00 " "	3c & 1½c*** " " "

*Plus a fixed charge of 5c per month per 100 sq. ft. floor area.

**Plus a fixed charge of 8c per month per 100 sq. ft. floor area.

***Plus a fixed charge of 15c per month per 100 sq. ft. floor area.

†NOTE:—May 8, 1928, par value reduced from \$100.00 to \$25.00 per share.

The Hartford Electric Light Co.

HARTFORD, CONN.

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for GROWING INDUSTRIES



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to

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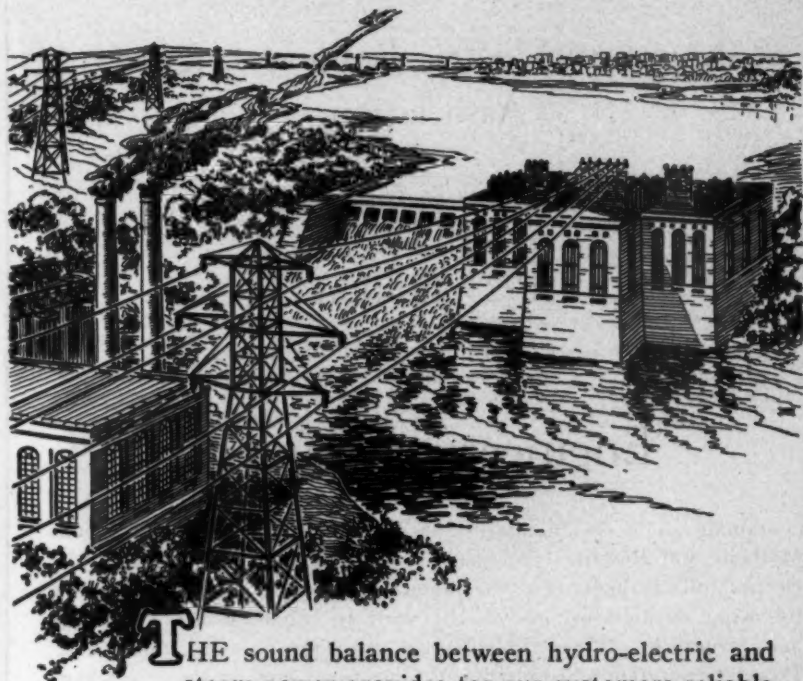
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containing all of the Standards, Recommendations and Miscellaneous Methods and Practices approved by the A.E.R.E.A. for use by the electric railway industry. The Manual includes divisions covering the following departments of electric railway organization: Buildings and Structures; Power Distribution and Transmission; Equipment; Power Generation and Conversion; Purchases and Stores; Signaling; Way Matters; Wood Preservation. Each of these eight divisions is published separately for the convenience of those not requiring the entire Manual.

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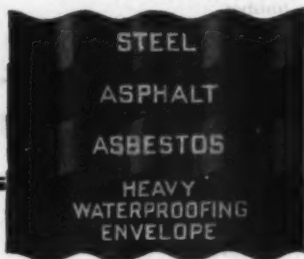
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**MEMBERS, DELEGATES and
GUESTS**

of the

**National Electric Light
Association**

IN ATTENDANCE AT THE

53rd CONVENTION

IN

SAN FRANCISCO, JUNE 16th-20th

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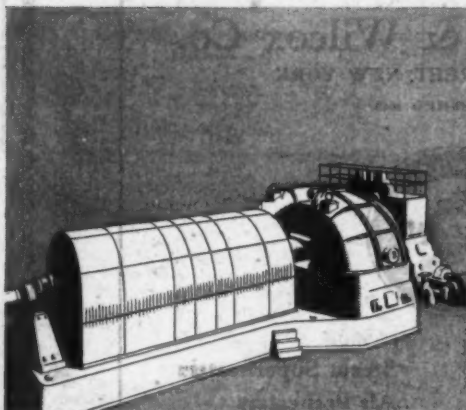
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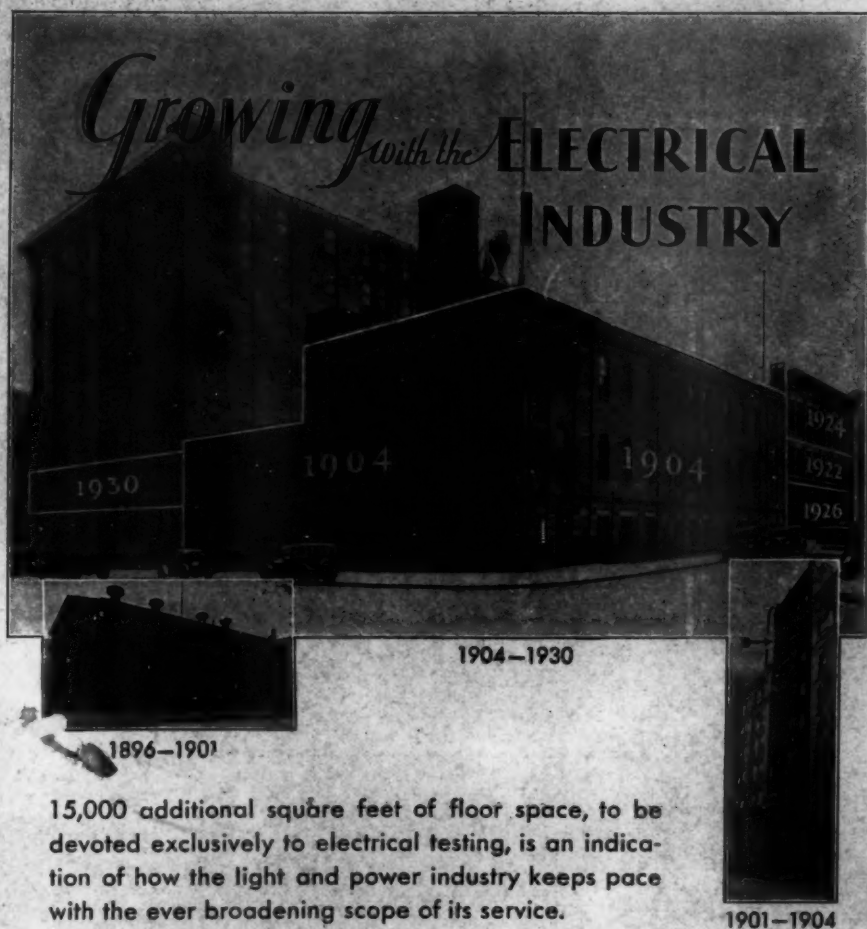


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